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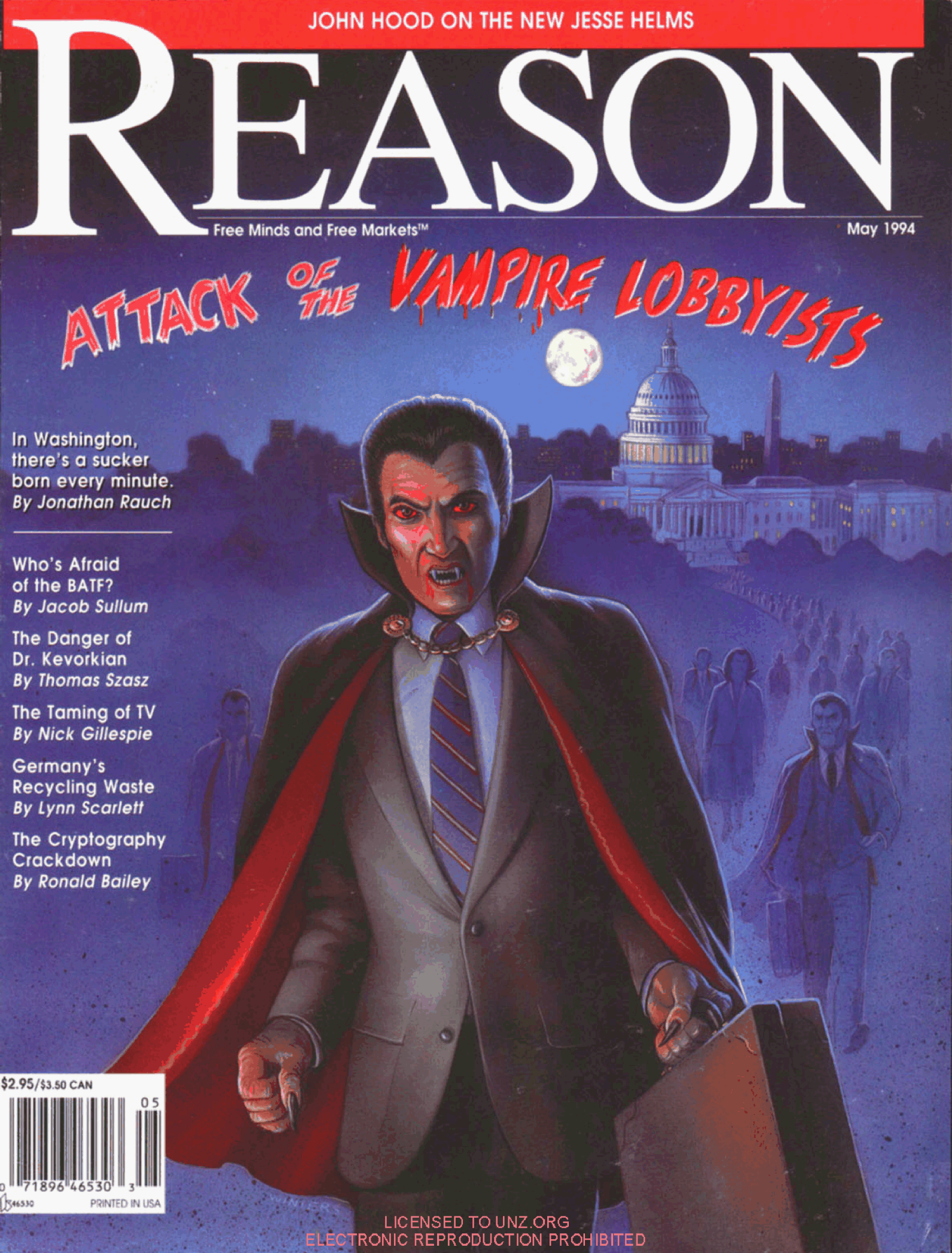

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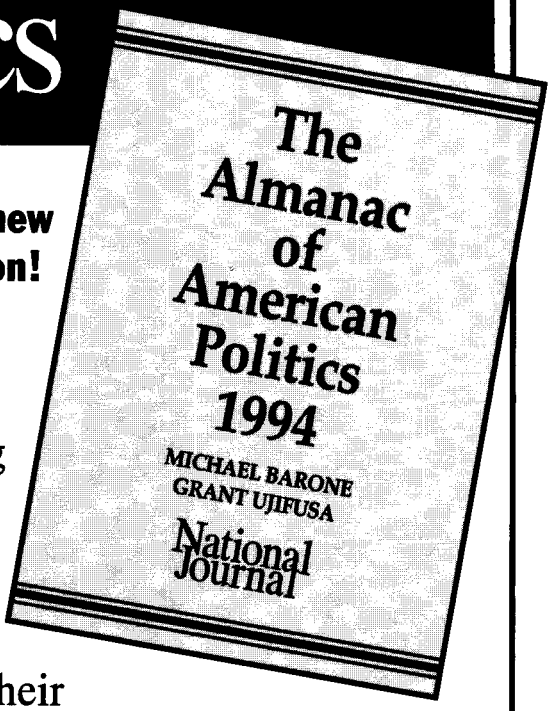

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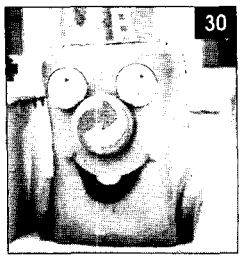

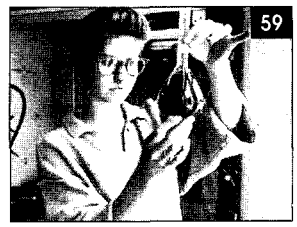

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Whitewater Falls

By Virginia I. Postrel

Whitewater is more than a scandal. It's Clintonomics in action.

Our government has lost touch with our values, while our politicians continue to shout about it. I was raised to believe that the American Dream was built on rewarding hard work. But we have seen the folks in Washington turn the American ethic on its head. For too long, those who play by the rules and keep the faith have gotten the shaft, and those who cut corners and cut deals have been rewarded.

—Bill Clinton, 1992 Democratic National Convention

THE 1992 DEMOCRATIC CONVENTION was quite a spectacle, filled with *Oprah*-style personal revelations and infused with the giddy anticipation of power. Again and again, Democrats congratulated themselves on their compassion, their enlightenment, their feminism, their commitment to "change." Self-righteousness flowed like a mighty stream. And the savings-and-loan bailout got nearly as many mentions as abortion.

"The most irresponsible people in all the 1980s were those at the top of the ladder: the inside traders, quick buck artists and S&L kingpins who looked out for themselves and not for the country," read the party's platform.

"In Houston [at the Republican convention], the supply-siders, the race baiters and the S&L looters will tell us that self-indulgence was self-reliance," prophesied party chairman Ron Brown.

"Remember the savings and loans?... Americans discovered that wealthy bankers—educated in the most exquisite forms of conservative, Republican banking—through their incompetence and thievery, and the government's neglect, had stolen or squandered everything in sight!" said Mario Cuomo.

Such behavior would soon be a thing of the past, promised the party. "In contrast to the Republican policy of leniency toward white collar crime...Democrats will redouble efforts to ferret out and punish those who betray the public trust, rig financial markets, misuse their depositors' money or swindle their customers," vowed the platform.

And, at the convention's climax, Bill Clinton declared, "In the name of all the people who do the work, pay the taxes, raise the kids, and play by the rules, in the name of the hard-working Americans who make up our forgotten middle class, I accept your nomination for President of the United States."

WHAT A DIFFERENCE TWO YEARS MAKE. Now we know where Bill and Hillary Clinton got their ideas about the '80s, about S&Ls, about quick-buck artists, about politicians who shout about values, about "those who cut corners and cut deals." The Clintons weren't just mouthing Democratic slogans. They were speaking from experience.

The Clintons had a party in the '80s, and the people of Arkansas—and, quite likely, the rest of us, too—paid for it. The tribunes of the "forgotten middle class," the denouncers of greed, lived like Third World aristocrats, with a bevy of servants, a mansion, cars, and most of their expenses provided by the taxpayers of the nation's second-poorest state. Bill and Hillary Clinton lived far more lavishly than most other thirtysomething Ivy League yuppies, not to mention the Democratic platform's beloved "working men and women." And the Clintons made most of their money and obtained their perks not by productive, wealth-creating labor but by exploiting the "parasite economy," reshuffling other people's money through the political process.

Without inherited wealth, an appreciating home value, or much investment savvy, the Clintons accumulated a net worth of $700,000—an enormous sum for Arkansans in their early 40s. That wealth represented the profits of power: Bill's job brought both a nearly-all-expenses-paid lifestyle and a promise of influence-for-hire through the very pricey Hillary. She wasn't named one of the 100 *best* lawyers in America by *National Law Journal* but one of the 100 most powerful.

None of this was news even during the Clintons' convention coronation. And any honest observer also knew that the S&L fiasco was a bipartisan affair—though few journalists bothered to clarify that point during their convention commentary.

But we didn't know back then just how much of the '80s the Clintons had spent hanging out with an S&L kingpin, how hard they had tried to be quick-buck artists, and how much of their personal and political fortune was tied to the legalized looting of the federal treasury. We didn't know how infrequently the Clintons and their friends played by the rules.

We still don't know for sure. With new Whitewater allegations and revelations emerging almost daily, the question now is whether the Clintons are criminals, or just sleazy influence peddlers who play fast and loose with the Internal Revenue Code (while denouncing people who argue for lower tax rates). Either way, we've heard the last of "St. Hillary."

WASHINGTON LOVES SCANDALS. I DON'T. Scandals usually depend on mind-numbing details. They create backlash. And they detract from substance. Just as ClintonCare was about to go down to humiliating defeat on its merits, Whitewater emerged to take the blame. The almost-

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discredited health-care plan lingers on, and Hillary preserves her undeserved image as a policy wizard.

The first lady even blames her health-care crusade for the Whitewater scandal: "This is a well-organized and well-financed attempt to undermine my husband, and by extension, myself." (Revealing quote, that. Most Clinton sympathizers would reverse the targets.)

But the Whitewater affair isn't just a scandal. The Clintons aren't just sanctimonious hypocrites. And Eleanor Clift's *Deliverance* defense—"We're looking at a difference in cultural business mores between Arkansas and Washington"—doesn't just insult small, Southern states. It misses the whole point.

The Clintons' Arkansas and the Clintons' Washington are, in fact, much the same. Whitewater reveals the way the Clintons as policy makers, not just personal profit-seekers, see business and politics and the relation between the two. The administration's economic policy represents the very combination of regulation and subsidies, the mingling of the public and the private, that creates Whitewater-style cronyism.

"This is a pro-business administration," Chief of Staff Mack McLarty recently told *The Washington Post*. Business and government used to be enemies, he said. "That's not the case any more: We're all in this together."

That doesn't mean, of course, that the Clinton administration will keep its hands off business matters. Rather, it favors businesses that might favor Clinton—selling airplanes with a presidential phone call to King Fahd and U.S. loans to the Saudis, for instance—and punishes businesses that cross its policies. Witness Hillary's tirades against the pharmaceutical and insurance industries.

In the Clintons' America, profiting from politically encouraged legal retainers and loans you don't have to repay is OK; profiting from creating and selling life-saving drugs is evil. What matters is whose side you're on.

"We're not looking at Central America. We're looking at the United States," said Michael Barone in response to Clift's *Deliverance* defense on *Crossfire*. "They weren't the governor of Nicaragua. They were the governor of a state in the United States."

But Central American–style mercantilism, with its privileges for the well-connected few and oppressive regulation for the masses, is what Clintonomics is all about. It's what makes Bill Clinton a "New Democrat," rather than an old-fashioned business basher. Whitewater isn't an isolated scandal. It's policy. ®

Smokenders

By Jacob Sullum

The paternalists come out of the closet.

IN 1990 I INTERVIEWED A MAN NAMED Ahron Leichtman for a story about the anti-smoking movement. At the time he was president of Citizens Against Tobacco Smoke, which had successfully lobbied for a federal law banning smoking on airplanes. "We're not trying to protect the smoker from himself," he insisted. "We're trying to protect the non-smoker from the smoker." Since then Leichtman seems to have changed his tune. He is now executive director of Citizens for a Tobacco-Free Society.

The shift from Citizens Against Tobacco Smoke to Citizens for a Tobacco-Free Society is a sign of the times. Anti-smoking activists and their government allies have always been paternalists, but lately they seem to feel less of a need to pretend that they're not. This suggests that they do not anticipate much opposi-

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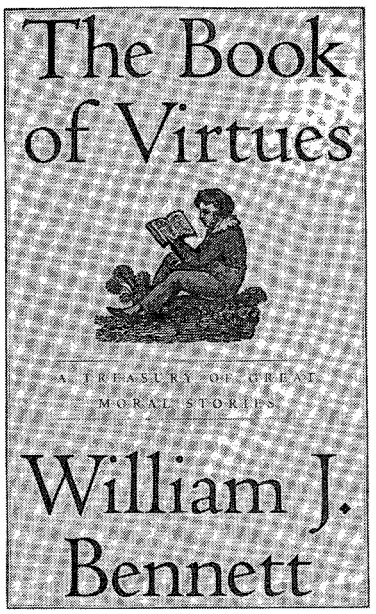

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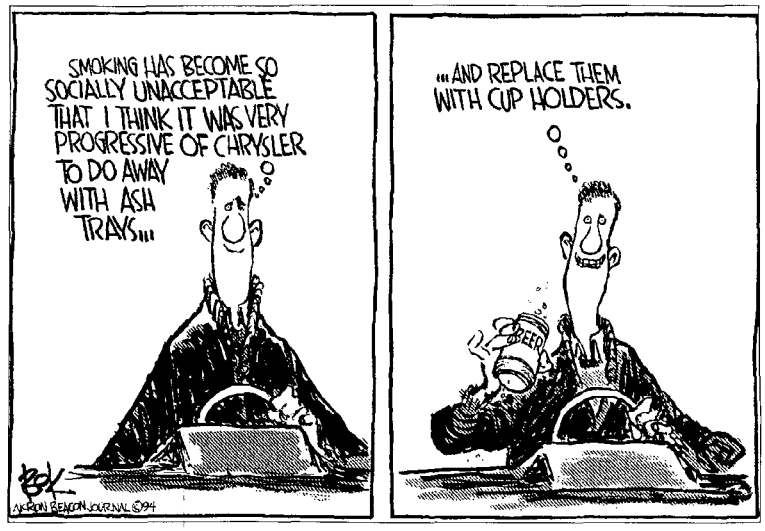
tion to measures aimed at achieving "a tobacco-free society."

Leichtman is not the only anti-smoker to go public with his ambitions. In late February, David Kessler, commissioner of the Food and Drug Administration, said that tobacco can be viewed as a drug, a revelation that earned him front-page coverage in major newspapers. If tobacco is a drug, he reasoned, maybe the FDA should have authority over cigarettes, in which case it would have to ban them as unacceptably hazardous.


SMOKING HAS BECOME SO SOCIALLY UNACCEPTABLE THAT I THINK IT WAS VERY PROGRESSIVE OF CHRYSLER TO DO AWAY WITH ASH TRAYS...
...AND REPLACE THEM WITH CUP HOLDERS.
BEER

Congress is not about to let the FDA ban cigarettes, although Rep. Mike Synar (D-Okla.) has introduced legislation that would allow the agency to regulate them. The point of Kessler's little charade, in which he was shocked—*shocked*—to discover that cigarettes contain nicotine, was to emphasize the addictive nature of tobacco and portray smokers as witless victims rather than independent moral agents. If smokers do not choose to smoke, but are instead chemically compelled to do so, the government is doing them a favor when it tries to stop them.

"Those smokers who are out there are addicted because of nicotine," Synar said on the March 10 *Crossfire*. "Tobacco is as addictive as heroin, and many Americans are hooked." Rep. Henry Waxman (D-Calif.) made a similar claim on the March 9 *Nightline*: "A large number of smokers would like to give it up, but they can't do it because this hook has been placed on them by the tobacco industry."

This is nonsense. It may be difficult to stop smoking, but it is certainly not impossible. About as many Americans have quit smoking as currently smoke, and more than 90 percent of them gave up the habit without formal treatment. It's clear that the appeal of cigarettes goes beyond nicotine, since 50 million Americans continue to smoke despite the availability of nicotine gum and patches, even though smoking entails greater risks. That choice would be inexplicable if a nicotine fix were all that smokers wanted.

THE SAME PEOPLE WHO CLAIM THAT SMOKers are nicotine slaves advocate measures designed to discourage smoking by making it more expensive and less convenient. Supporters of the Clinton administration's proposed 75-cent increase in the federal cigarette tax say it will reduce disease and death by getting smokers to quit or cut back. And they can cite research showing that price increases reduce cigarette purchases. But this means smokers are able to calculate the additional cost imposed by a tax hike, weigh it against the benefits of smoking, and modify their consumption—not the sort of behavior you'd expect from someone whose will has been stolen by the tobacco industry.

Last winter Carol Browner, administrator of the Environmental Protection Agency, testified in favor of Waxman's Smoke-Free Environment Act, which would ban smoking in almost all indoor locations except residences. This measure goes well beyond what most non-smokers say they want: A CNN/*Time* poll conducted in March found that majorities of non-smokers favor segregation rather than bans in workplaces and hotels.

Indeed, the main benefit that Browner claimed for Waxman's bill was the expected effect on smokers. "The reduction in smoker mortality due to smokers who quit, cut back, or do not start is estimated to range from 33,000 to 99,000 lives per year," she said. Six former surgeons general, reports *The New York Times*, "echoed the theme that this simple measure could do more for public health than any other bill in years."

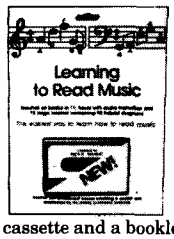
Apparently, smokers are oblivious to the costs of smoking except when those costs are imposed by the government. Their addiction blinds them to the serious health risks of smoking, so they are not deterred by the prospect of lung cancer, heart disease, and emphysema. But if the price of a pack goes up by 75 cents, or if they have to step outside to smoke, they will decide to quit.

The problem is not that smokers are incapable of judging their own interests and acting accordingly. It's that people like Leichtman, Kessler, Synar, Waxman, and Browner don't want to let them. Since 1965, the percentage of adult Americans who smoke has dropped from about 40 percent to about 25 percent. The decline occurred mainly because of information about the health effects of smoking and changes in social attitudes. But that last 25 percent is proving stubborn, and increasingly coercive measures will be required to eliminate smoking.

"I think what we ought to hope for is that the American people go to a smoke-free society," Waxman said on *Nightline*, "but that's going to have to be done voluntarily." For Waxman, punitive taxes and smoking bans that tell people how to use their own property are "voluntary."

Synar, too, has little patience for individual choice. Frustrated by the refusal of so many Americans to adopt his own tastes and preferences, he declared on *Crossfire* that "millions of smokers haven't accepted the fact that they should give it up." The *fact*? The arrogance of the anti-smokers enables them to leap the is/ought gap in a single bound. R

CHIP BOK



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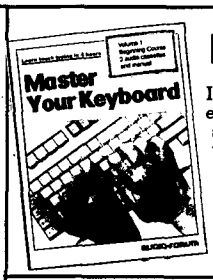

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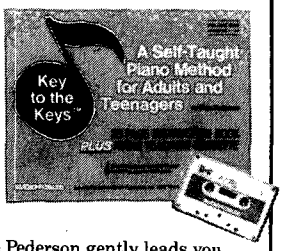

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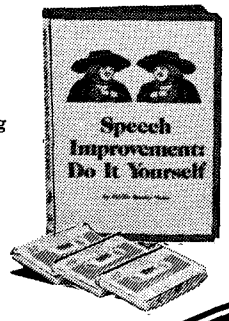

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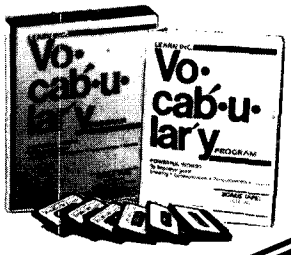

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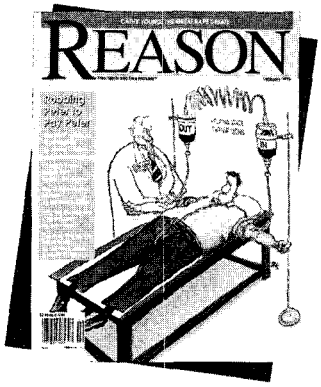

Take and Give

In "Where Have All the Dollars Gone?" (Feb.), James Payne exposes some of the unspoken assumptions that make government entitlements seem beneficial. He points to the dual illusions of the state as a cornucopia of benefits and as a frictionless machine transferring money from those taxed to those subsidized. He is especially eloquent in debunking the latter.

If we consider the potential productive capacity of the excess baggage we support, we see the cost of taxes rise even further. What if all the tax accountants, lawyers, and agents, the publishers of tax books and software, as well as the time we spend as individuals keeping records and preparing tax forms, were directed toward producing useful goods and services? What if, instead of draining the economy of productive capacity, they were adding to it? What of the capital and hard resources devoted to tax compliance?

And we should not overlook the value of lost leisure and family time. I remember predictions made as I was growing up that with improved methods of production, the work week would shrink to four days. Yet with all the improvements since then, we see more now than ever both parents working to maintain about the same standard of living as our fathers were able to earn for us on their income alone. We work more efficiently *and* longer, just to feed the tax monster.

Mitchell Stary
New Richmond, WI

Much as I enjoyed James Payne's article, it is evident he still does not get it. Government programs have become a means of employment for government workers. They do not care if a program does what it was supposed to do, or if it does any good at all. That it provides work and income to the administrators, from the presidential appointee to the lowliest mailroom clerk, is its reason for existence.

Consider: With the downsizing of the military machine many Washingtonians will be out of work. What to do? Start a program called Universal Health Care, a great bureaucratic employment vehicle. Unlike the Pentagon, it will not be whiplashed by the exigencies of the nation's defense. It will go on and on forever—not just in Washington, but in every state capital and large city in the nation.

Alan R. Moore
Albion, MI

James Payne did a wonderful job of tackling an issue that has bothered me for many years. The only shortfall was his failure to address one of the most obvious cases of government take-and-give: taxing the income of government workers.

What sense does it make to pay a civil servant, military officer, or government contractor $35,000 from the U.S. Treasury and then deduct $5,250 to $7,400 of it in income tax? The only result is wasted overhead by the IRS to process and verify his tax return. If federal employees simply had their salaries cut by the appropriate amount, it would mean millions fewer tax returns for the IRS to process each year—and a substantial savings in time, money, and natural resources.

James D. Maloy
Columbia, MD

Chip Bok's February cover neatly captured the first point James L. Payne made: The subsidized pay their own subsidies. It might have occurred to so imaginative an artist to illustrate Payne's second point as well: Two-thirds of the subsidy is lost in the "transfusion." But the result would have been a gory picture: blood spurting from leaks in the bottles and tubes, forming a large red pool on the floor.

Or perhaps he did visualize it but, after reading Steve Kurtz's "Déjà Viewing" (Feb.), felt the chill wind blowing from today's would-be censors. Did REASON wimp out in the face of Janet Reno and Tipper Gore? Say it ain't so.

Brian Christeson
Alexandria, NH

Roving Thievery

I can vouch for the validity of the statement in "Casualties of War" (Feb.) that forfeiture is spreading to other offenses. In June 1992 I received a registered letter from a special agent of the U.S. Fish and Wildlife Service accusing me of violating the Airborne Hunting Act and the Endangered Species Act, both of which have forfeiture provisions.

The service believes that flying sailplanes along Colorado's Front Range, an area where raptors nest, constitutes illegal harassment of the birds. This interpretation ignores the fact that both birds and sailplanes have successfully coexisted in the area since the mid-1950s, when a local soaring club was formed; that soaring birds commonly choose to soar with sailplanes; and that annual monitoring by local, state, and federal agencies of all known raptor nests in the area since the mid-'80s has shown all species of hawks to be successful in fledging young, with the sole exception of one golden eagle pair. Nevertheless, the Fish and Wildlife Service agent said the next time I violated the laws my sailplane would be seized. I would also be subject to fines up to $200,000 and a prison sentence of one year in jail under both statutes.

R. F. Whelan
Ft. Lupton, CO

Sleepless in Van Nuys

Much as I treasure each issue of REASON, I confess I am often left discouraged, depressed, frightened, and even sleepless. In the February issue, the excel-

lent pieces by Tama Starr on sexual harassment ("A Reasonable Woman"), by Hannah Lapp on child abuse ("Child Abuse"), and by Steven Duke and Albert Gross on the war on drugs ("Casualties of War") left me with these feelings.

What is under attack now is not just the Constitution, whose basic provisions have been all but meaningless since the New Deal anyway, but the rule of law. If the law cannot provide a guide for action according to which one can tell at the time that a deed is right or wrong and govern oneself in good faith, then the definition of crime is at the retroactive discretion of police, bureaucrats, judges, and "victims." When a "perception" by any malcontent becomes the standard of sexual harassment, when Child Protective Service busybodies can remove children from a family on any pretext, and when the drug warriors can evade any constitutional guarantee based on blatant expediency, the moment fast approaches when we must ask if the United States has become a police state in every essential respect.

The facade of democracy does not help. As Thomas Jefferson said: "It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one....As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for."

Kelly L. Ross
Van Nuys, CA

Minor Premise

Virginia Postrel's editorial, "The Children's Hour" (Feb.), was a wonderful exposé of a tactic used by advocates of big government. They increasingly exploit the feelings of parents for their children and thereby put all reason and logic on hold. But this is a tactic that can be used by libertarians to cut the other way.

If all government spending at the federal, state, and local levels is divided into personal income, the ultimate payer of all taxes, the result is over 50 percent. Parents pay more for bureaucrats than to raise their own kids. What percentage of parents would answer yes to the following question: Do bureaucrats deserve more of your income than your own kids? It is always important to learn from the enemy.

Keary K. Ehlers
Arlington, TX

Virgnia Postrel's editorial on children as political human shields was right on the mark but failed to mention the armored assault on the Branch Davidians. According to Attorney General Janet Reno, the use of tanks and tear gas was justified because some federal agents feared children in the compound were being abused. The

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children all died, of course, but the raid must be judged at least a partial success: Reno can be certain that none of the children is being abused today.

Brian Tillotson
Huntsville, AL

Kids are simultaneously the most protected and the most exploited segment of American society. In both cases the reason is to increase government control of those segments of society which can or do come into contact with children—in other words, just about everything.

Part of the problem is that the government has not decided whether kids are citizens with certain rights and responsibilities, or merely the property of their parents. The law is currently a muddy mix of the two—and any time there is equivocal law, one can be certain that someone with power will use that lack of clarity against the citizenry as a whole.

Mark Kernes
Los Angeles, CA

Virginia Postrel is absolutely correct that "too many activists are using kids as human shields, to hide adult agendas." For the past three years, I've been studying the EPA draft reports on environmental tobacco smoke. In the first draft, the EPA didn't emphasize children's respiratory conditions. On the advice of its Science Advisory Board, the agency did a complete turnaround in its revised draft and made a big deal out of ETS exposure and children's health. Now all we hear is how we must protect our children from ETS.

Martha Perske
Darien, CT

Ancient Insights

Steven Hayward's review of Stephen Holmes's *Anatomy of Antiliberalism* ("Ill-Liberalism," Feb.), though workmanlike and challenging, raised my ire. His siding with Holmes against Leo Strauss as an antiliberal seems as facile and superficial as he goes on to show John Rawls's *Theory of Justice* and *Political Liberalism* to be. Also, the hit-and-run critique of Fukuyama's *The End of History* is herd-like and getting a bit old.

Strauss's main point in stressing the importance of the ancients is very much as Hayward put it himself: "To the extent that very modern thought has discarded the classical view of human nature, as both Strauss and MacIntyre argue, both liberalism and republicanism are undermined." Hayward goes on rightly to suggest that a reaffirmation of human nature is the one thing most needful for a rehabilitation of liberalism. But where else has this sort of critique been forthcoming, besides from the "bookworm heroism" of Strauss and his students? Libertarians in general are blind to the extent to which their beloved classical liberalism eroded the very notion of human nature which Hayward agrees must now be recovered.

Another issue which lies in the shadows here is the relation of philosophy to the political order, another of Strauss's, and the ancients', central concerns. For Holmes (and apparently Hayward as well), the self-contradiction of such as Strauss lies in their "high-pitched jeremiads [which] fizzle into tiptoed retreats."

Those are rightly known as ideologues who try to patch together a plan of political action based on utopias or philosophical tracts questioning the first principles of the human world. The life of mind engenders the most human things, and in fact makes possible the political (in the ancient understanding of that term). Philosophy must inform the function of the city and regime; it must never be allowed to degenerate into ideology by being hardened into concrete political programs.

The general misunderstanding of Fukuyama's *History*, which Hayward and Holmes seem to share, in part stems from this misunderstanding of the place in the city for philosophy. In one sense, Fukuyama was only restating what Aristotle had already resigned himself to in his *Politics*: Democracy of one sort or another is inevitable. Both Tocqueville and Hegel saw this truth, and Fukuyama in part merely points out that liberalism is the highest, and therefore last, theoretical alternative available as an acceptable and therefore possible regime in the philosophic search for the best arrangement. He carefully notes that most of the world's nations are not now, nor perhaps ever will be, a part of the apex of human political ordering which constitutional liberalism represents.

Harold Kildow
Manchester, NH

Mr. Hayward replies: I am grateful for Mr. Kildow's letter. It was with readers like him in mind that I wrote the review as I did.

I willingly plead no contest to the lesser charge of not directly taking up a cudgel against Holmes's tendentious interpretation of Leo Strauss. But far from "siding with Holmes against Strauss," I thought my criticism of Holmes's view was, though implicit, nonetheless clear enough not only in the passage Mr. Kildow cites but also in the recommendation of the Pangle and Rahe books as proper remedies. At the same time, I do think the charge of "bookworm heroism" is fitting for some (not all) in the Straussian community (a community in which, by the way, I include myself—at least part of the week). Few are willing to venture into the arena of practical politics, chiefly out of a stuffy regard for the distinction between philosophy and the city that Mr. Kildow mentions. Even if they do, then what? Have you ever tried to explain the Straussian view of political life to a real, live politician? I have. It's not pretty. But if the "crisis of the West" is as grave as some Straussians claim, the above-it-all philosophical detachment from the world of practical politics does begin to look like "bookworm heroism."

I plead not guilty to the charge of hit-

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and-run on Fukuyama's "end of history" thesis, though, to be fair to Mr. Kildow, I could have been more precise by saying that the end of the Cold War has not left the world in the hands of *liberalism* (rather than liberals). I think Fukuyama is right, but I also see a real prospect that America could join the ranks of those nations that are not "part of the apex of...constitutional liberalism." I base this gloomy view in part on what I've been seeing lately among legal theorists at our elite law schools. In this broader, historic battle now underway, Holmes is an ally, and perhaps even a friend. We can fight with him later about his animus toward Strauss.

Frank Response

Sadly, the appearance of Steve Kurtz's piece detailing attempts to regulate pop culture ("Déjà Viewing," Feb.) coincided with the passing of Frank Zappa. Kurtz is correct to cite Zappa's fight against record labeling as an early version of the current congressional hoopla about TV and video games. That 1985 hearing even included a bizarre excursion into children's toys.

During an exhange with Sen. Paula Hawkins (R-Fla.), Zappa was asked what kind of toys his children had. With characteristic bluntness, Zappa wondered aloud how that could possibly be relevant. Hawkins said she would be "interested to know." So Zappa invited her to "come over some time" and see for herself. That invitation, which brought snickers from onlookers, made explicit that the contemplated content guidelines would do nothing less than invite dopey politicians into American homes. With Janet Reno on the rampage, that's a point worth remembering.

Jeff A. Taylor
Gaithersburg, MD

Who Needs Missiles?

I've been puzzled for some time now by the pundits who insist we need an orbital Maginot Line to fend off ICBMs. Michael Boldrick's "Going Anti-Ballistic" (Feb.) did nothing to justify the idea for me.

While ICBMs may soon (or already) be available to terrorists, my question is, why would they bother? Surely a nuclear weapon could be delivered to its target by cheaper and more reliable means. Mr. Boldrick not only fails to answer this question, he seems intentionally blind to it. He uses the example of a missile aimed at the World Trade Center—plainly ignoring the recent bombing of that very target. It was carried out using nothing more exotic than a rented moving van. A low-yield nuclear weapon delivered by the same means could level the entire southern end of Manhattan, while our ABM systems vainly searched the skies.

James D. Maloy
Columbia, MD

Mr. Boldrick replies: I believe ICBMs will be the weapon of choice for terrorist states with a grudge against the United States big enough to square with nuclear weapons. First, we have no defense against missile warheads. Second, it's unlikely a bomber or submarine could approach our coastline without detection by air or sea defenses. Also, missiles are easier to obtain than long-range bombers (which require aerial refueling capability to achieve intercontinental ranges) or submarines.

So why not use a truck like the World Trade Center bombers did? Remember, their explosives were derived from fertilizer, which can be purchased without arousing suspicion. Smuggling a nuclear device into the United States is an entirely different project. Anyone crossing our border with radioactive uranium or the highly specialized electronics required to detonate a nuclear weapon would likely meet the FBI up close and personal.

Finally, I don't advocate a space-based Maginot Line. There's no such thing as a perfect defense against high-tech weapons. Space sensors can increase the effectiveness of ground-based interceptors by giving advanced warning of approaching missile warheads. Meanwhile, we are spending U.S. tax dollars to defend foreign cities against terrorist missiles. Why aren't we doing the same for our own?

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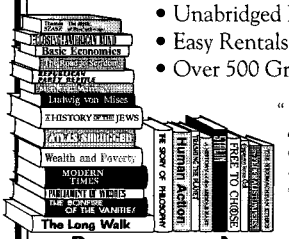

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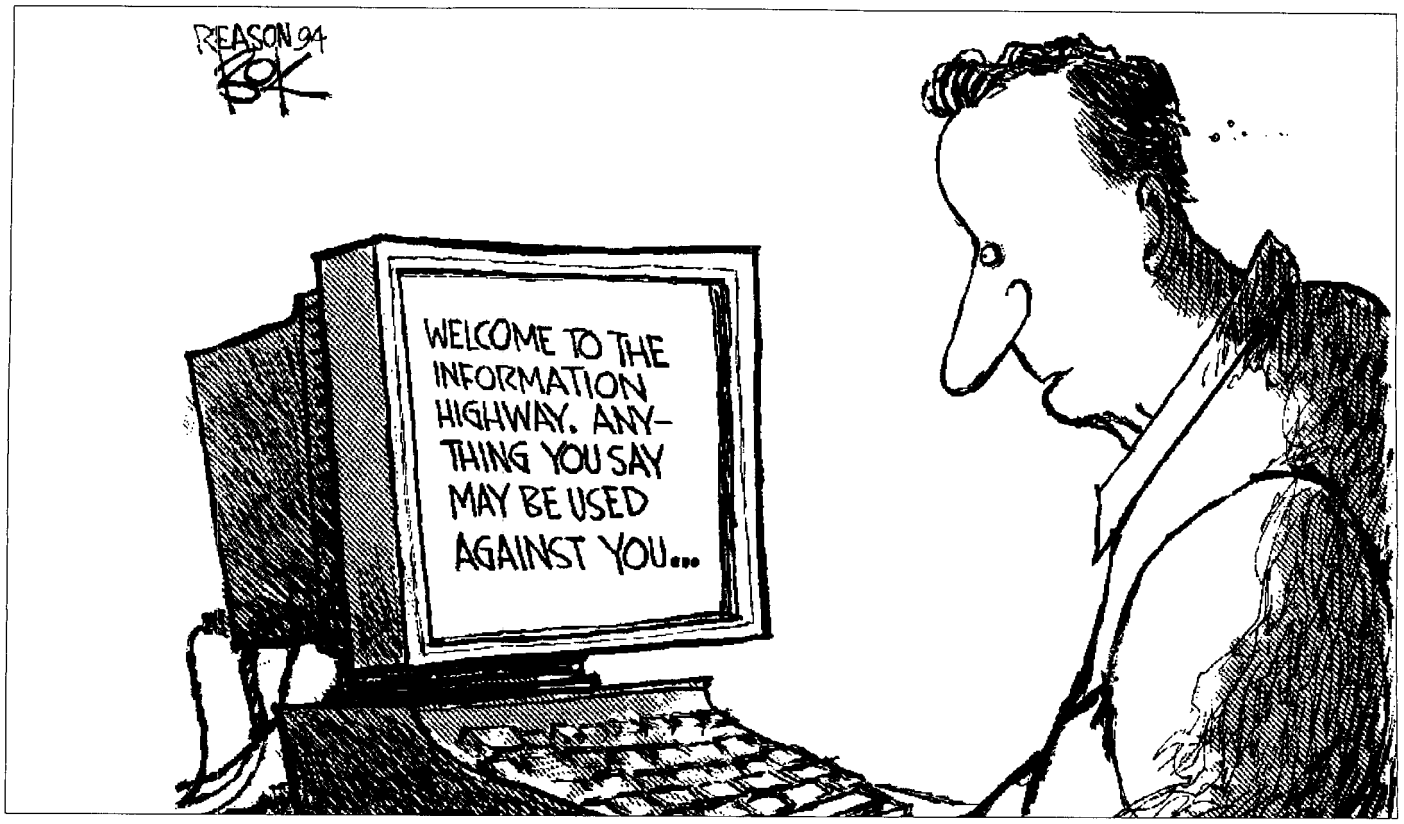

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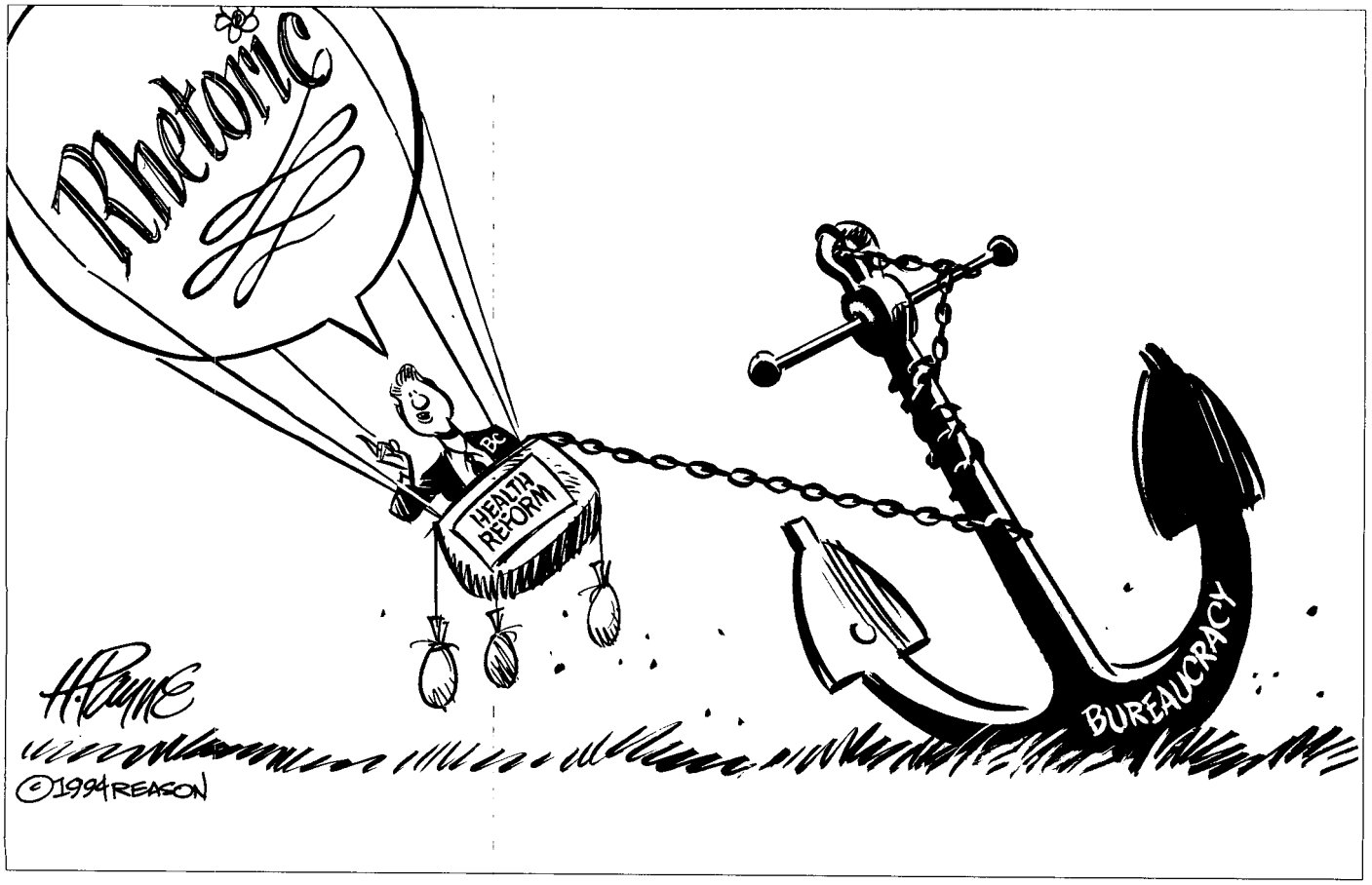


HENRY PAYNE

SCOTT STANTIS

■ **"They are designed to kill as many** people as possible." Assault weapons? No, hands and feet. New York Gov. Mario Cuomo has joined the fight against semi-automatic guns, but state crime figures show that his energy is being misdirected. In 1992, the latest year for which detailed figures are available, semi-automatic, large-capacity rifles killed 20 people in New York state. That's 0.8 percent of the state's 2,394 murders. But hands and feet—beating and stomping—accounted for 117 murders. That's nearly six times the number caused by assault weapons.

■ **Meanwhile, officials in neighboring Con**necticut have called off a guns-for-goods swap program. The problem is profiteering. People were buying cheap handguns and immediately turning them over to police for more-valuable gift coupons. One man turned in 39 rifles worth $70 each and received a certificate worth $100 for each. That's a profit of almost $1,200.

■ **Reeling from budget cuts, the U.S. Army** recently signed a 100-year lease for a luxury hotel at Disney World.

■ **The Florida Supreme Court has ruled that a** police officer violated the rights of a man suspected of drunken driving by asking him to recite the alphabet from C to W. The court ruled that by requesting the partial alphabet, rather than the whole one, the officer was trying to trip the man up —in effect asking him to be a witness against himself and violating the guarantee against self-incrimination. Asking for the whole alphabet is OK, said the court, because that's simply a request for information.

■ **Not even the Russian government can get** away with not paying its electric bills. In separate incidents, state-owned power companies cut off power to the headquarters of the Baltic Fleet and to one of the country's main aviation-control centers for delinquent payments. The military base relied upon its reserve generators until it cleared the matter up, but several jets were left floundering in the air while the aviation center paid its bill.

■ **Keith Wright, a member of the Australian** Parliament, will likely be putting his long battle against pornography on hold. Wright has been sentenced to eight years in prison for raping a teenage girl. He faces additional charges of sexually abusing two other young girls.

■ **In Great Britain, Prime Minister John Ma**jor's government has called for a halt to the construction of suburban shopping malls. The reason: Customers like the things too darn much. In presenting its plans to curb the development of malls, the government said that the malls must be stopped because they are draining customers away from the small shops in the cities.

■ **Meanwhile, British prosecutors are trying to** block the opening of the new play *Maxwell: The Musical.* The play is the story of press baron and corporate looter Robert Maxwell. The prosecutors contend that the play might prejudice the cases they are bringing against Maxwell's sons and business associates, Kevin and Ian.

■ **Eighteen million people rode the Staten** Island ferries last year. And possibly just as many cockroaches did too. The New York City Department of Transportation has been waging war against the little critters—that's the roaches, not the passengers—but the roaches seem to be winning. Officials have been spraying the boats once a week and bombing them once a month, but they're still crawling with bugs.

■ **In Iowa, a postal carrier was asked to re**sign after he refused to deliver copies of *Time* and *Newsweek.* The mail carrier said that "as a follower of Jesus Christ" he could not deliver the magazines. One featured a cover story on lesbians; the other, a cover story on prostitution.

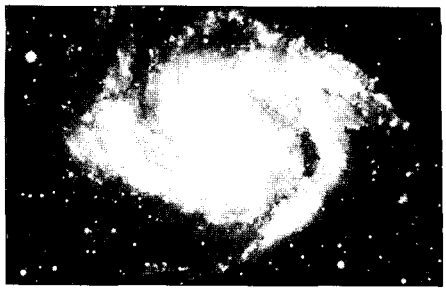
■ **Finally, the forces of P.C. have struck** again. Great Britain's Gateway supermarket chain has decided to emasculate the Gingerbread Man. Now, the stores will carry only politically correct Gingerbread Persons.

—Charles Oliver

E.T., Phone Earth

The search for extraterrestrial intelligence goes on, at private expense.

By Elizabeth Larson



SETI will listen for patterns in the noise from space.

On Columbus Day 1992, the National Aeronautics and Space Administration launched a much-expanded Search for Extraterrestrial Intelligence (SETI), an attempt to locate civilizations on other planets by picking up their radio signals. A year later, looking for some token budget cuts, Congress voted to eliminate SETI. But the program lives on as Project Phoenix, run by the SETI Institute, a private, non-profit foundation in Mountain View, California.

SETI uses huge radio antennas, sophisticated digital receivers, and computers to scan the radio-frequency spectrum in an attempt to detect non-random signals. The detection of such patterns would indicate the existence of a technically advanced civilization. The program was interrupted less than a year into its expected 10-year life when Congress eliminated its $12.3-million annual budget.

Within three months, the SETI Institute had raised $4.4 million—more than half of the $7.3 million needed to keep the project on schedule through mid-1995. Among the major donors (in the million-dollar range) are David Packard and William Hewlett of the Hewlett-Packard Corporation; Paul Allen, co-founder of Microsoft and founder, chairman, and CEO of Asymetrix Corporation; and Gordon Moore, co-founder and chairman of the board of Intel Corporation.

Science-fiction writer Arthur C. Clarke also donated money for a public-awareness campaign about the project in England. "An international funding base for SETI is appropriate," says astrophysicist Jill Tarter, Phoenix Project manager. "A signal will have been sent to planet Earth and not just to the USA." Once the initial goal has been met, the SETI Institute will continue its fund raising to provide the $3 million needed annually for the project's scheduled decade-long run.

Because many of the project's target stars are best observed from the Southern Hemisphere, Project Phoenix will first be operated at the Parkes radio observatory in New South Wales, Australia, in early 1995. (SETI scientists need the time between now and then to upgrade the digital receiving instruments developed by NASA.) The project will then return to observatories in the Northern Hemisphere—first to the largest radio telescope in the world, the 1,000-foot-diameter telescope in Arecibo, Puerto Rico. ®

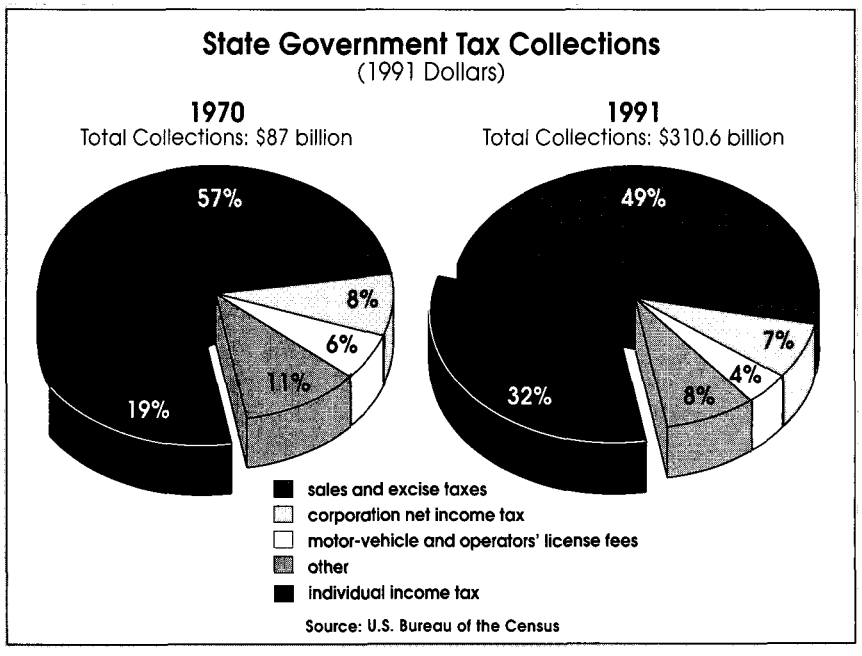
Double Take

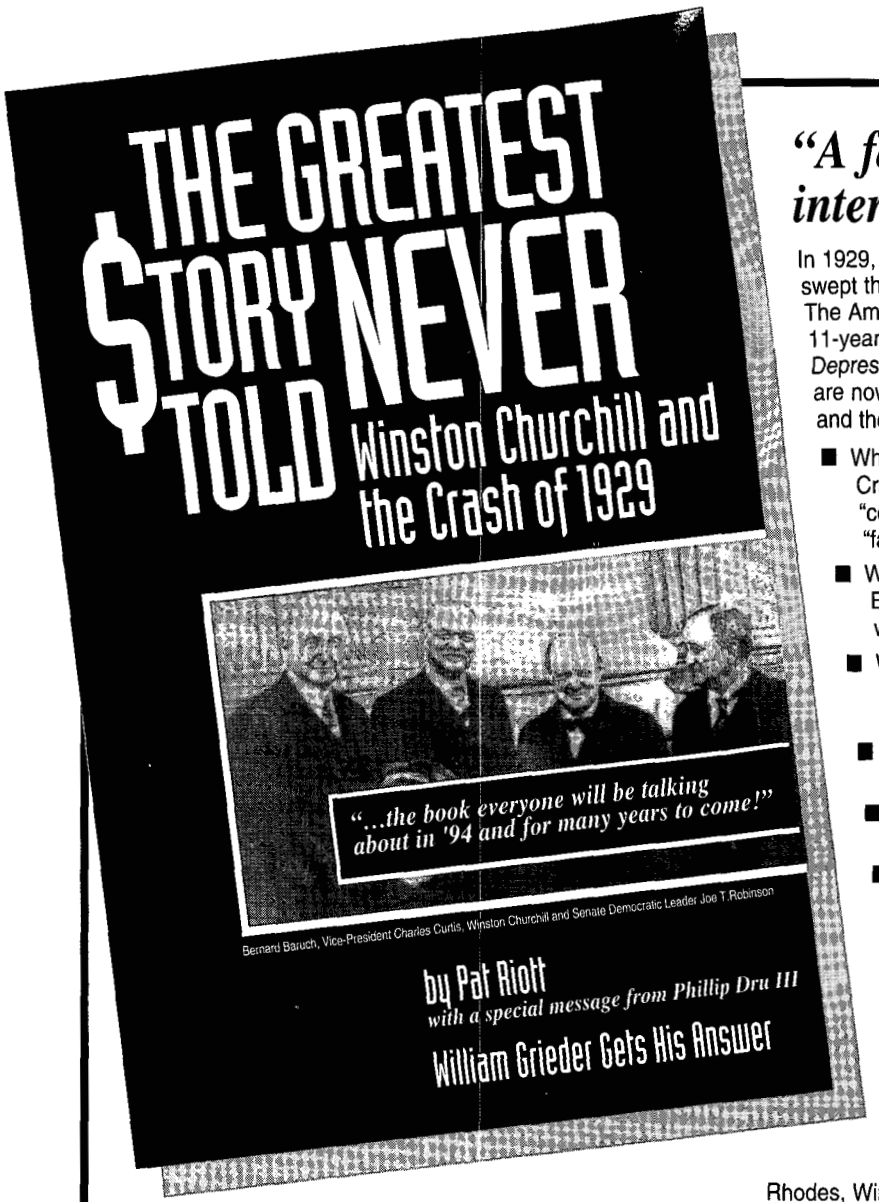
State tax collections have risen dramatically since 1970.

By Nick Gillespie

The Internal Revenue Service usually gets credit for the collective fear and trembling that grips the country every April. That's fair enough, since the IRS collects the lion's share of each American's income. Significantly compounding any national levies, however, is the ever-increasing amount skimmed by state governments. In 1970, total state tax collections were $87 billion (in 1991 dollars). By 1991, the total came to $310.6 billion, an increase of 257 percent. Over the same time period, the U.S. population increased by only 23 percent.

But state taxes aren't just getting higher; they're getting more broad-based. While sales taxes continue to net the majority of revenue for states, personal-income taxes have almost doubled their take as a percentage of the total. In a display of efficiency rare for government policy makers, the states have figured a way to nail you twice: first when you make the money and again when you spend the remaining amount.

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Debt and Taxes

The hidden costs of ClintonCare

By Rick Henderson

IF YOU THOUGHT THE SAVINGS-AND-loan bailout was a whopper, just wait. Inside the bowels of President Clinton's Health Security Act is a debt-creation scheme that could make S&L looters look like pikers.

Under the bill, individual health plans that get into financial trouble—say, by offering overly generous benefits—could stave off cash shortages by rationing care or by borrowing from the state, which would raise the money by taxing financially sound plans within the same regional health alliance. If an entire alliance runs out of money, Title IX, Subsection C allows it to borrow from the federal government. Such loans are permitted for shortfalls that result from an "estimation discrepancy," "an administrative error," or "the relative timing during the year in which amounts are received and payments are required to be made."

An alliance is supposed to repay its loans by increasing premiums or by getting more money from the state—in other words, by raising taxes. The secretary of the treasury can also unilaterally impose a payroll tax on members of the alliance to cover outstanding loans.

But antsy state and federal legislators could easily refuse to raise taxes merely to cover a health alliance's errors. Instead of cutting back health services, lawmakers would let the alliances off the hook and allow them to not repay the loans. It's also unlikely that a cabinet official would commit political suicide by raising taxes without the consent of Congress.

Rep. Christopher Cox (R-Calif.), a member of the House Budget Committee and the Joint Economic Committee, says the alliances might initially get a blank check. Once an agency gets the statutory authority to borrow money, he argues, it's easier to raise its debt limit than to repeal its borrowing powers. Cox predicts that alliances will use this credit scheme to run up huge tabs. But they won't have an endless source of funds. Ultimately, he says, "we'll get both—borrowing and rationing of care." ®

Cuts from A to Z

Spelling out deficit reduction

By Rick Henderson

PRESIDENT CLINTON'S ANNOUNCEment that the 1994 budget deficit would reach "only" $180 billion—a figure 40-percent smaller than projected last year—hasn't dampened spending-cut fever on Capitol Hill. A bipartisan group of House members is pushing a bill that could eviscerate most pork-barrel programs.

Last August, Rep. William Zeliff (R-N.H.) asked Speaker Tom Foley (D-Wash.) for a special session of Congress to propose additional cuts to the current budget. A majority of the 435 House members—160 Republicans and 74 Democrats—signed Zeliff's letter to Foley. When the speaker did not respond, Zeliff joined with Rep. Rob Andrews (D-N.J.) to propose HR 3266, the "A to Z Spending Cut Program."

This bill would require a special session of Congress to consider spending cuts. Each member would have the opportunity to propose cuts in a single federal program or a package of cuts in different agencies. Each proposal would then be debated on the floor, and an on-record, up-or-down vote would follow.

Zeliff legislative assistant Chip Griffin suggests it will be difficult to pass packages that simultaneously cut several programs. Instead, he predicts that most of the proposals will seek to cut or eliminate one item in the budget, say, the $5 million to build a parliament building on the Solomon Islands, which belong to the British Commonwealth, or the $142 million in helium subsidies.

In early March, the A to Z bill had 180 cosponsors and the staunch opposition of Foley and every committee chairman. Griffin says supporters hope to persuade Democratic leaders to act on the bill by gathering at least 218 cosponsors—a majority of House members.

If that fails, Zeliff has said he will rely upon an obscure House rule known as a discharge petition. When supporters of a bill collect the signatures of at least 218 members on a discharge petition, that bill must come to the floor for a vote without any amendments.

Zeliff calls his plan "so simple it's scary." With the Congressional Budget Office's prediction that ClintonCare would add to the deficit, not reduce it, and the continuing debate over a balanced-budget amendment to the Constitution, deficits stay in the headlines. Members of Congress may have a tough time dodging this one-time chance to make real spending cuts. ®

CHIP BOK

Victimless

Reclaiming feminism

By Elizabeth Larson

"NO, FEMINISTS DON'T ALL Think Alike," a recent cover of *Ms.* magazine announced. Yet the cover story—a roundtable discussion with Naomi Wolf, Gloria Steinem, and others—belied the headline. While the participants disagreed over some fine points of radical feminist theory, their talk was uniformly leftist, and partisan references—to the "racist right wing," to Republican Texas Sen. Kay Bailey Hutchinson as a "female impersonator"—popped up in conversation.

So if all feminists really *don't* think alike, where are the ones that disagree with *Ms.*? They've formed a new group called The Women's Freedom Network. Founded in 1993, the network publishes a quarterly newsletter and plans to hold media briefings, issue press releases, and sponsor a national conference.

Based in Washington, D.C., the WFN is dedicated to "empowering individual women rather than the state and its bureaucracies," according to the organization's statement of purpose. The WFN argues that the portrayal of women as victims is "creeping paternalism" in the guise of feminism. REASON Contributing Editor Cathy Young, one of the group's founders, and her colleagues say they "view women's issues in light of a philosophy that defines women and men as individuals and not in terms of gender."

Accordingly, the WFN does not expect uniformity of opinion among women in general or among its members—as the diversity of the group's national governing board makes clear. Members range in their political beliefs from conservative to contemporary liberal to libertarian, and in their occupations from journalism (syndicated columnist Joanne Jacobs, REASON Editor Virginia Postrel) to academia (historian Elizabeth Fox-Genovese and philosophy professor Christina Sommers) to business (Barbara Lydick, president of an aerospace consulting firm). ®

Balance Sheet

By Rick Henderson

Assets

Backdraft. Part of Bill Clinton's tax increase could disappear. The U.S. Court of Appeals for the Ninth Circuit prohibits retroactive tax hikes when taxpayers don't receive "actual or constructive notice" of the retroactive change. A Supreme Court review of the decision may go further. In an amicus brief, the Washington Legal Foundation asks the Court to nullify any retroactive tax—including provisions in Clinton's 1993 bill—applied to such "completed transactions" as estates or gifts.

Nothing but Net. New Jersey Gov. Christine Whitman sacks subsidized sports. She nixes a deal to move the NBA's Philadelphia 76ers to Camden; a new arena would cost taxpayers $100 million. And she plans to save $17 million a year in subsidies by selling the Meadowlands complex, home of the NFL's Giants and Jets, the NBA's Nets, and the NHL's Devils. A possible buyer, reports *Forbes*, is Devils owner John McMullen.

Independent Clause. Maryland and Virginia Democrats join the welfare-reform brigade. (See "Working on Welfare," Apr.) Maryland Gov. William Donald Schaefer wants to cut off benefits for recipients who are unemployed after 18 months on the dole; Virginia's legislature passes a bill that cuts people off after 12 months. Both state plans would restrict benefits for women who have additional children.

Screen Play. Under pressure from Japan Inc., Japan's communications ministry says it won't abandon its government-subsidized analog high-definition television technology. (See "The Big Picture," Aug./Sept.) Don't believe it. Digital HDTV, developed by unfettered U.S. entrepreneurs, has slam-dunked the market, leaving the subsidized system almost scoreless.

Liabilities

Smoke Screen. The courts snuff medical marijuana. Despite a ruling by the Drug Enforcement Administration's chief administrative law judge that marijuana should be reclassified for therapeutic purposes, the U.S. Court of Appeals for the D.C. Circuit lets the DEA continue to prohibit medicinal pot.

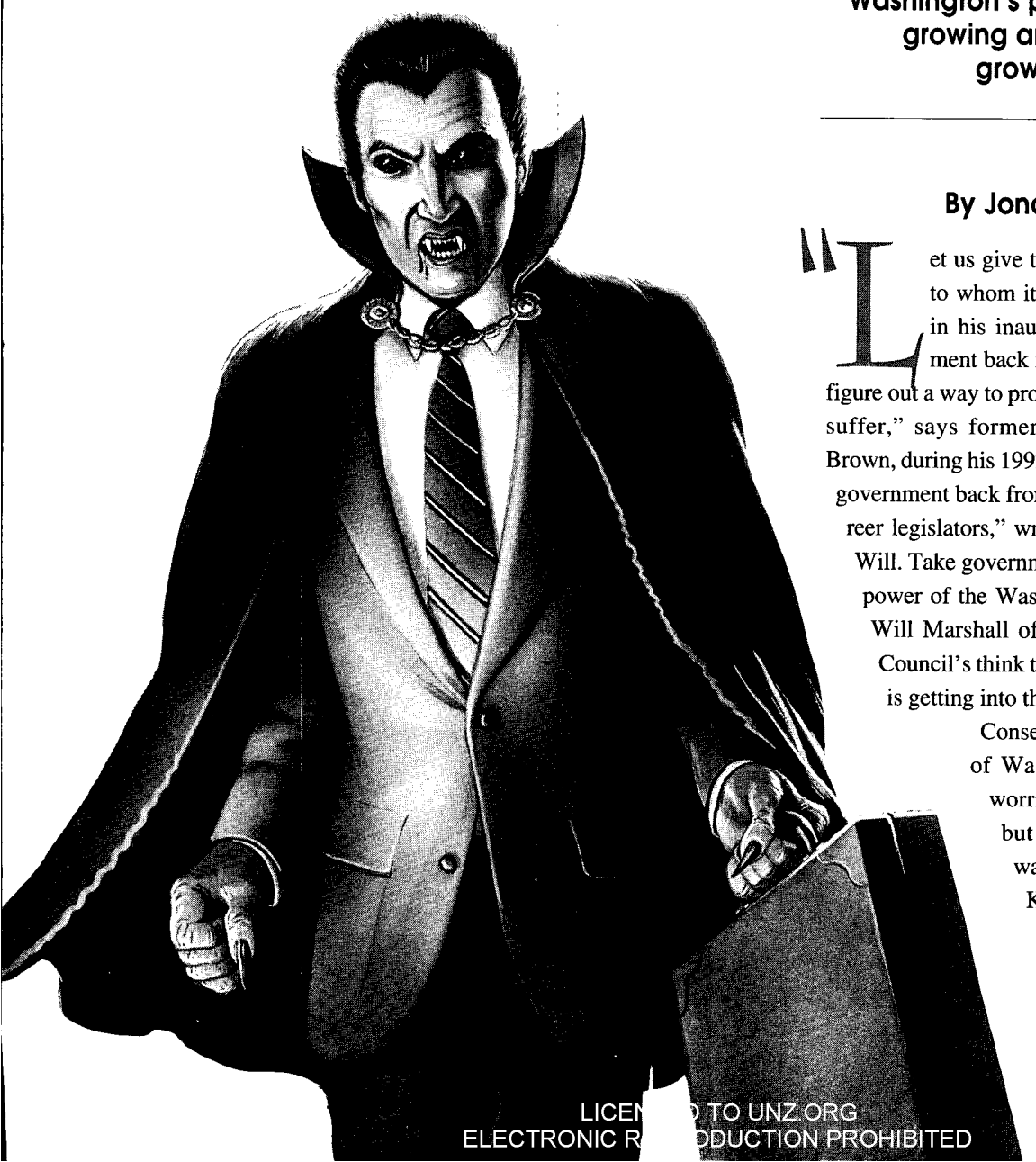
Industrial Policy Labs. Sen. Barbara Mikulski (D-Md.), who chairs the subcommittee that funds the National Science Foundation, sounds a death knell for non-pork-barrel research funding. Mikulski, reports *Science*, says the NSF should stop imitating a university, with departments of biology, mathematics, and earth sciences. Instead, she says, it should finance "strategic research" and establish "institutes on manufacturing, global change, [and] high-performance computing."

Landed Gentry. Stakeholder representation finds a home on the range. (See "*Animal Farm*, Circa 1994," Mar.) Interior Secretary Bruce Babbitt will form "regional advisory councils," with designated slots for greens, bureaucrats, and sympathetic ranchers, to rubber-stamp his Western land-use plans. *The New York Times* says Babbitt will create the councils by administrative decree, placing them outside congressional control.

Border Barrier. Unions demand vengeance for NAFTA. Rep. Dick Gephardt (D-Mo.) tells the AFL-CIO he will sponsor his own version of Ross Perot's "social tariff"—a bill that would tax or restrict imports from any country with lower wages or looser environmental regulations. And former Gephardt aide George Stephanopoulos says the White House wants to add a "workers' rights" pact to the General Agreement on Tariffs and Trade.

SUCKERS!

Washington's parasite class keeps growing and growing and growing and...



GREG WINTERS

By Jonathan Rauch

"Let us give this capital back to the people to whom it belongs!" cries Bill Clinton, in his inaugural address. Take government back from "the people who always figure out a way to prosper even as more Americans suffer," says former California governor Jerry Brown, during his 1992 presidential campaign. Take government back from the "permanent class of career legislators," writes the columnist George F. Will. Take government back from "the awesome power of the Washington *nomenklatura*," says Will Marshall of the Democratic Leadership Council's think tank in Washington. Everyone is getting into the take-government-back act.

Conservatives have always spoken of Washington as being, in some worrisome sense, out of control, but recently consternation has washed centerward. Sen. Robert Kerrey of Nebraska (like Jerry Brown, a 1992 Democratic presidential contender) talks

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grimly about the strangely self-referential, self-feeding quality of modern government. "We allow interest groups to create new bureaucracies and then the bureaucracies serve the interest groups," he says. Across Capitol Hill, Rep. Timothy J. Penny (D-Minn.) says glumly, "It's a control game we're playing now. It's an insider's game." From Penny and Kerrey and Marshall and Will and Brown and Clinton and others comes a chorus of demands to "give this capital back to the people to whom it belongs."

The issue at hand is not just the size and growth of government but the size and growth of the professional lobbying industry attached to and feeding upon government. It was said of the Soviet military complex that when we built, they built, and when we didn't build, they still built. Something similar seems to happen with lobbies: When government grows, they grow, and when government doesn't grow, they still grow, though maybe not as fast.

A handful of sugar refiners donated $8,500 to Sen. Alfonse D'Amato and received his successful support for a tariff rebate worth $365 million—a return of about 4 million percent. Only a fool would pass up such an investment, or even the occasional shot at one. "If I throw in a million here or a million there, I might get a hundred million back," says a Washington lobbyist. "And there are probably enough cases like that so they keep throwing money in."

The take-government-back crowd assumes that, somehow, Washington can be restored "to the people." But what if they're wrong? Few have yet confronted this question: What if government *cannot* be "taken back" from the entrepreneurial professionals who increasingly dominate it? Emergent theory and postwar experience give reason to think that the infestation of parasites in Washington is ineradicable. Worse, the infestation isn't stable. It grows.

On this score, the facts speak without ambiguity. By all known measures, the transfer-seeking economy has grown spectacularly over the past 30 or so years, with no end in sight. The number of groups listed in the *Encyclopedia of Associations* more than quadrupled between 1956 and 1990, from 4,900 to more than 22,000. Those groups represent only a fraction of the total. The number just of environmental groups, including local cleanup coalitions and the like, is now estimated at 7,000; the number of gay groups listed in the *Washington Blade*'s resource guide grew from 307 in December 1990 to 405 earlier this year. Not all groups lobby, of course, but many do. Evidence suggests, indeed, that groups have become more likely to engage in lobbying; the proportion of trade associations based in Washington has been steadily rising, which suggests deepening political involvement.

Counting lobbyists is hard, but all counts show increases. The number of active lobbyists registered with the U.S. Senate has jumped from 3,000 in 1976 to around 8,000 last year; between 1961 and 1982, the number of corporations with Washington offices increased tenfold. The number of lawyers in Washington quadrupled between 1972 and 1987, from 11,000 to 45,000. And the investment in politics, as measured by real campaign spending, has tripled since the early 1960s.

One could go on and on this way. The data leave no doubt that the past several decades have witnessed explosive growth in the lobbying sector—a trend quite unruffled by the comings and goings of Democrats and Republicans, conservatives and liberals, Reagan or Clinton or whomever. Why?

At the heart of the problem are the curious internal mechanics of the goody-hunting industry, with its virus-like ability to convert the organs of government into factories producing more lobbies. To understand why this parasitic subeconomy grows and grows, ascend some steps in the spiral logic of lobbying.

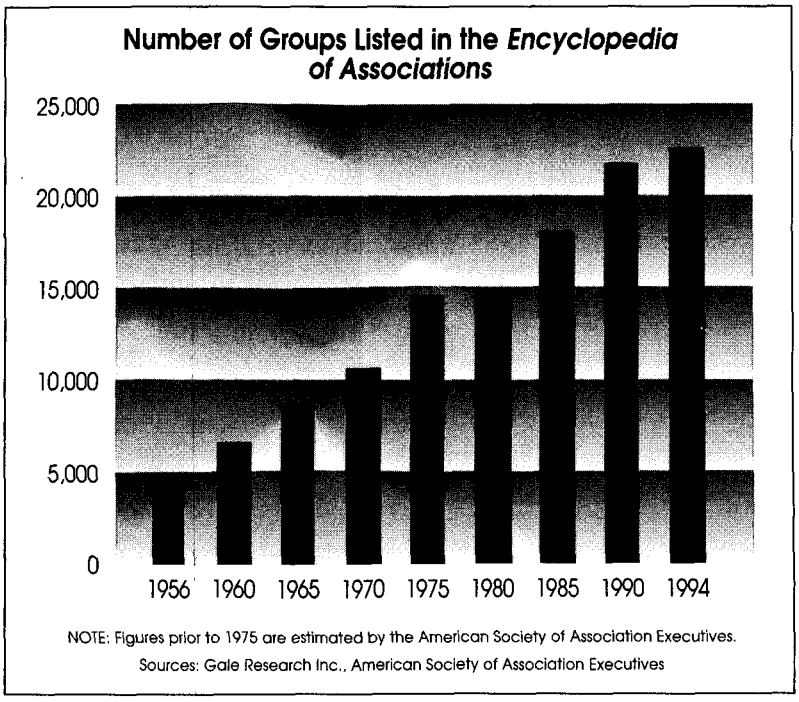
1) Transfer seeking—the chasing of existing wealth—is inherently alluring to individuals yet inherently hazardous for society. The concept of transfer seeking (or "rent seeking," as professional economists more obscurely call it) is intuitively familiar, though its economic implications are not. For any individual, there are two ways to become wealthier. One is to do something productive. The other is to redistribute existing resources in one's own favor. From an individual's self-interested point of view, the two kinds of enterprise are more or less interchangeable, because either can make you richer. But from a social point of view, they are very different. If we all work, we create wealth, and society is better off. But if we all do nothing except try to get our hands in our neighbors' pockets, we will all be very busy, yet we will all eventually starve.

One major form of transfer seeking, theft, is prohibited. But not all forms of transfer seeking are illegal. Indeed, some large quantity of it is inevitable. We call it "lobbying," in the broadest sense of the word: pressuring government to give us things we value.

2) Any government that's strong enough to govern is vulnerable to entrepreneurial exploitation by lobbies—there's no getting around it. It is government's very power to be government that creates the market for legal transfer seeking—a point that deserves emphasis, because so many people refuse to face up to it. Inherently, government transfers and assigns resources, whether by levying taxes to pay soldiers or by setting patent rules. This power would be unproblematic, except that resources will always be contested, and one reason we have politics is to decide how to assign them. Some people daydream about ways to adjust the Constitution or otherwise fine-tune the process so that gov-

ernment is empowered to deliver only "wise" or "necessary" or "legitimate" benefits. But that's a tall order.

Was the Superconducting Super Collider a national-interest (or even world-interest) project? Or was it a pork-barrel handout for hard-lobbying scientists and harder-lobbying Texas construction contractors? Are the advocates of lower capital-gains taxes out to revitalize the economy, or to line their pockets? The answer, of course, is that there is no answer. It's all a matter of opinion, and government's job is to decide—so we're back where we started.



Transfer seeking is as old as government itself. A century ago in America, veterans and manufacturing industries wielded considerable lobbying clout. Being both inevitable and hallowed, lobbying might not be much of a worry if it stayed constant over time. But the rude surprise is that it doesn't. Lobbying, a physicist might say, is dynamically unstable.

3) The transfer-seeking economy, like any lucrative enterprise or sector, is a magnet for capital. In a developed economy, a marginal dollar invested in a new die-cutter or inventory-control system might produce a return of, say, 10 percent a year. Compare that with a shrewd investment in lobbying. In 1992, *The New York Times* reported that a handful of sugar refiners donated $8,500 to Sen. Alfonse D'Amato (R-N.Y.) and received his successful support for a tariff rebate worth $365 million—a return of about 4 million percent. Only a fool would pass up such an investment, or even the occasional shot at one. "If I throw in a million here or a million there, I might get a hundred million back," a Washington lobbyist once told me. "And there are probably enough cases like that so they keep throwing money in."

Not only does lobbying offer a rich assortment of investment opportunities, today it also enjoys unprecedented access to investment capital. In the old days of the smoke-filled rooms, access to lobbying was restricted mainly to the privileged ("special interests"). Democratization of the system justifiably opened the doors, but with a side effect: Today, in the age of mass-membership organizations and computerized mailing lists, the pool of people who can invest in lobbying comprises the entire adult population. To invest in lobbying is as easy today as to invest in a mutual fund: Find an interest group you like, if one doesn't find you first, and write a check.

Of course, any growing industry attracts capital—until further growth becomes superfluous, at which point profits vanish and investment dries up. But the lobbying sector, unlike conventional industries, doesn't seem self-equilibrating. To the contrary:

4) Transfer-seeking investment tends to be self-fueling, sucking in capital which tends to suck in yet more capital. This is a kind of whirlpool effect, and it is the reason I refer to the transfer-seeking industry as a "parasite economy." Parasites in nature force you to spend energy and resources fending them off. Transfer seekers are analogous, because they require their targets to fend them off. It takes a lobbyist to stop a lobbyist, and in a society where everyone can lobby, everyone needs Washington representation to defend against raids by everyone else's Washington representatives. When environmentalists lobby more, business lobbies more, and vice versa.

The cycle never seems to stop of its own accord. Because the best defense is a good offense, interest groups constantly angle for new goodies. Retirees' groups seek long-term care and prescription-drug subsidies, dairy farmers seek higher price supports, utility companies seek laws mandating electric cars, and so on. When the sugar people win a benefit, the corn-sweetener people need to try to even up the score. Each group's angling induces its competitors to redouble their efforts, and, as more lobbies dicker and more is invested in lobbying, it becomes all the more important not to be the poor sucker who gets taken to the cleaners. The more people play this game, the more people need to play. Demand creates more demand, business generates more business.

5) Further fueling the cycle, professionals in the transfer-seeking sector can churn up business, and do. Transfer-seeking professionals—politicians and lobbyists and interest groups—are good at stirring the pot, and so at creating jobs for each other. Whether they do so out of idealism or financial interest—usually the former, I believe—the end result is perpetual motion. Other things being equal, the more contention, the better. The parasite economy as a whole benefits when problems are solved with a maximum of fuss but a minimum of success—a pretty good description of Washington at present. Significant bills revising the tax code were enacted in 1981, 1982, 1983, 1984, 1986, 1988, 1989, 1990, and 1993 (another was vetoed in 1992), yet no one seemed particularly happy with the tax code. Well motivated or not, constant tax-law churning is good business for one group

above all: professionals in the transfer-seeking business.

This is not to say that most or even much of what Washington does is drummed up by lobbyists and politicians purely to generate fees. Not even Washington is quite that cynical a place. The point, rather, is that the lobbying dynamic is self-perpetuating: Activity generates lobbying generates activity. As the activity level rises, with it rises the public's ire, because:

6) Transfer-seeking professionals win no matter who else loses. This is what so infuriates the public (and Jerry Brown). Yes, it's better to win than lose, and better to have a good track record than a bad one. But *any* fight over resources benefits transfer-seeking professionals as a class, because they reap the fees. In that respect, lobbyists, politicians, and interest-group professionals are like lawyers: Though some clients lose, the fee takers, as a class, all win. They're like plumbers in a city that's springing more and more leaks.

Year after year, in budget after budget, the Reagan and Bush administrations proposed abolishing the Economic Development Administration, which dishes out grants and subsidies to localities. Reagan and Bush always failed, but they did succeed in reducing the EDA's budget, notably by eliminating general revenue sharing. "We figure our programs were cut about 70 percent," says Aliceann Wohlbruck of the National Association of Development Organizations, a group of EDA beneficiaries. Yet in 1979, before Reagan, the group had only one full-time staff person; it now has four, plus part-timers. The program's budget got smaller, but its lobby got bigger—a neat trick. This pattern is not inevitable, but it is common. Over time, lobbies tend to grow. Having grown, they are very hard to get rid of; in fact, attacking them can perversely help them to mobilize and consolidate their bases. One implication is:

7) As a class, transfer-seeking professionals don't much care who is in power. President Clinton came to office promising an assault on high-priced lobbyists: "They are the defenders of decline." And were the defenders of decline alarmed? Crowed one exultant lawyer-lobbyist in the *Legal Times* after the election, "We are all expecting about a 33 percent increase in fees." At firms with good Democratic connections, "the jubilation was palpable," reported the newspaper. But Republicans were hardly less elated, citing, as one prominent lobbyist told *National Journal*, "an almost automatic defensiveness from the corporate community on most issues it faces." Oh happy day!

Bill Clinton generally takes an expansionist view of government. Ronald Reagan generally took a reductionist view. Interestingly, however, the numbers of lobbyists and interest groups and campaign contributions rose impressively under Reagan. And that, really, is no surprise. If government expands, you need a lobbyist or an interest group to get a piece. But if government contracts, you need a lobbyist or an interest group to defend your piece. Remember, it is the level of contention and activity, not the size of government per se, that primarily influences the lobbying sector's growth. Reducing the size of government may be worthwhile on the merits, but it is unlikely to reduce the population of parasites, except perhaps temporarily.

The take-government-back crowd assumes that Washington can be restored "to the people." But what if they're wrong? Few have yet confronted this question: What if government cannot be "taken back" from the entrepreneurial professionals who increasingly dominate it? Emergent theory and postwar experience give reason to think that the infestation of parasites in Washington is ineradicable. Worse, the infestation isn't stable. It grows.

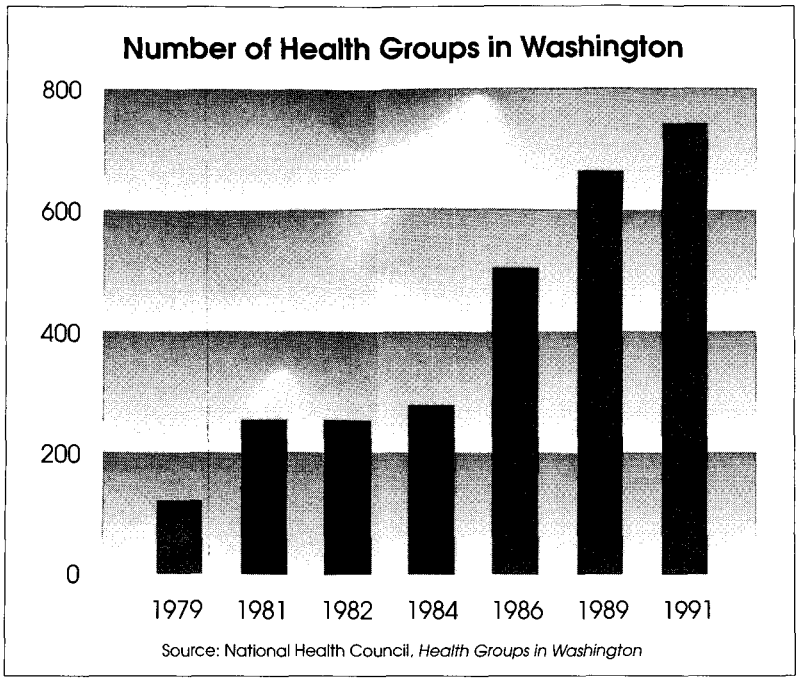
So the beat goes on, come Republicans or Democrats, liberals or conservatives. In 1993, the American Automobile Manufacturers Association moved to Washington; so did the National Association of Independent Schools, saying it "wanted to be closer to the source"; so did the Business Roundtable. Washington offices opened left and right: the Society of Manufacturing Engineers, the Christian Coalition, MasterCard and Visa, even Major League Baseball. The latest trend, reports Eliza Newlin Carney in *National Journal*, is for universities (including public ones) to open their own offices in Washington: Rutgers, Princeton, Harvard, Vanderbilt, the University of California, MIT, and more to come.

Where does it all end? Maybe it doesn't.

8) There is no apparent limit to growth of the parasite economy. There are constraints on the speed of its growth, such as the scarcity of politicians' time and attention; and some particular lobbies will stagnate or contract or disappear altogether, as presumably buggy-whip lobbies have done. Other sectors, however, will expand quickly or even explosively. The health industry's congressional giving was up 25 percent in 1993 over its comparable 1991 level, and the number of health groups in Washington has more than sextupled (!) since 1979. On balance, given the deep pool of potential capital for lobbying, plus the virtually infinite supply of potential goodies to lobby for (or against), plus the tendency of lobbies to accumulate, plus the tendency of lobbying to create more demand for lobbying, it is hard to see why the lobbying sector as a whole would stop growing and start shrinking.

Few trends, of course, go on forever. To say that at present one can see no limit isn't to say that no limit exists. One may hope that at some point the lobbying buildup will go into reverse of its own accord. One might suppose, for instance, that after a while there would be so many lobbies that many of them, like

bees swarming a puddle of honey, would be unable to penetrate to the food and would simply go away. Yet even this might only slow, rather than stop, the accumulation. Remember: A lobbyist doesn't need to actually pass a bill or win a new subsidy to earn his keep. In fact, in any given year the typical lobbyist never comes close to a big score. However, he doesn't need to score, *as long as someone else does*. Then he need only persuade some folks that they should look after their interests in Washington. And that is an easy case to make.



Source: National Health Council, *Health Groups in Washington*

Suppose, then, that the worst turns out to be true: that, at least for the foreseeable future, lobbying activity grows and grows no matter who is in power, albeit with lulls and spurts. New lobbies keep appearing and old ones only rarely go away. What would that mean?

The first reflex is to predict economic disaster, both because the product of lobbying is a heavy burden of subsidies and special-interest benefits, and because lobbying itself sucks in more and more resources. But disaster need not happen. In fact, it probably won't happen. I'm not saying that the growth of a self-feeding parasite sector is economically innocuous; it isn't. Only that it needn't be the end of the world—if American society stays as open as possible to new competitors and innovations.

In a closed economy, like India's or the old Soviet Union's or Mexico's until recently, entrenched lobbies and reactionary interests can drive the country to penury. Lobbies are like fungus: They thrive in stagnant, sheltered places. For decades, Japan sealed its rice market, giving shelter to a ruthless farmers' lobby that drove food prices up, held farm productivity down, and bought and bullied politicians on a massive scale. By contrast, America's farm lobby, though strong, is weaker than Japan's, yet America's farmers are more productive than Japan's—all thanks to the comparative openness of the American agricultural market.

Openness—to new technology and to new competition, foreign and domestic—turns out to be a good inoculation against the worst economic depredations of lobbying, because it batters entrenched interests. By definition, what lobbies want is a permanent hold on their benefits. That is, they seek monopoly control of some piece of the private market (through trade protection, for instance, or favorable regulations) or some piece of the public treasury (through subsidies or tax breaks). Once they've got their goodies, they go to great lengths to defend them—which is why heavily protected and subsidized industries, such as shipping, textiles, and agriculture, usually spend much more on lobbying than do less-protected ones, such as semiconductors and software. The converse is also true. Squeeze a lobby's monopoly, and you crimp its lifeline.

So the way to weaken the public-school employees' lobby—one of the most deeply entrenched and reactionary groups in American politics today—is by freeing tax money for public schools' competitors. The way to weaken the farm lobby is to reduce agricultural subsidies. The way to weaken entrenched textile lobbies is to tear down their protective trade walls. The way to weaken cable-television lobbies and phone-company lobbies is to get rid of rules preventing the two industries from competing with each other, as the Clinton administration proposes to do. In short, the way to weaken coddled interests is to expose them to competition.

The rub is that exposure to competition is exactly what lobbies organize to avoid. Public-school teachers, farmers, textile companies, and the rest fight tooth and nail to keep every perk and goody they have ever acquired. They win more often than not, and even when they lose they rarely stay down for long. After 33 years, Congress finally managed last year to kill the honey subsidy, but the beekeepers' lobby bounced right back with a campaign for new trade restrictions on imported honey.

So we shouldn't kid ourselves. Crimping the transfer-seeking sector isn't easy. In fact, it is very difficult. It will require much more of the kind of innovative and forceful political leadership that produced the deregulation of transportation industries in the late 1970s, the subsidy-smashing tax-reform bill in 1986, and the North American Free Trade Agreement in 1993. Harder still, it will require the voters to support politicians who attack subsidies and protections that the voters themselves, speaking through their myriad groups, so fiercely protect.

To date, brave leadership and enlightened followership have both been scarce and sporadic. But we can hope that, as the parasite economy feeds and grows, the public will see more clearly why strong medicine is worth taking: The alternative is worse. ®

Jonathan Rauch, a contributing editor of National Journal *in Washington, is the author of* Demosclerosis: The Silent Killer of American Government, *just published by Times Books.*

B·A·T·F OUT OF HELL

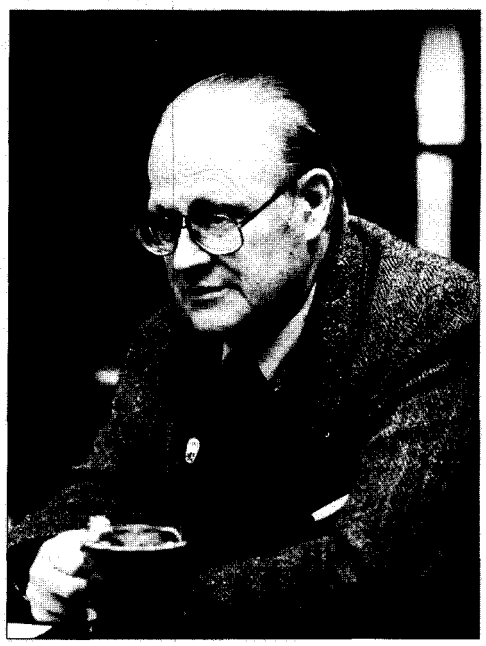
Even before Waco, people in the booze business were afraid of the Bureau of Alcohol, Tobacco, and Firearms.

By Jacob Sullum

A 12-ounce bottle of Grant's Scottish Ale contains 170 percent of the U.S. Recommended Daily Allowance for vitamin B-12. I can legally tell you this because I don't make beer for a living. But Bert Grant, creator of Grant's Scottish Ale, can't.

In January 1993, a few months after Grant and his wife, Sherry, started putting nutritional information on six-pack cartons of the beer, David Dunbar, an inspector with the Bureau of Alcohol, Tobacco, and Firearms, visited their Yakima, Washington, brewery. Dunbar told them that Yakima Brewing & Malting is not allowed to inform consumers about the vitamins and minerals in a bottle of beer. This surprised the Grants, because neither the Federal Alcohol Administration Act nor the regulations issued under it address nutritional information. The regulations do, however, forbid false or misleading claims about "curative or therapeutic effects," and the BATF cited a 1954 regulatory interpretation that says "any reference to vitamin content in the advertising of malt beverages would mislead a substantial number of persons to believe that consumption of the product would produce curative or therapeutic effects."

The Grants had to stop using the Scottish Ale six-pack cartons and drop plans to put nutritional information on the packaging of their other beers. But the rule seemed silly to them. So Sherry Grant wrote a press release about the BATF's order and sent it to some trade journals. "We felt it should be brought out, because we wanted the law changed," Bert explains. The story eventually attracted attention from the mainstream press, including *Playboy* and radio commentator Charles Osgood, as well as industry publications. The coverage was sympathetic to the Grants and critical of the BATF. An editorial in the *Vancouver Columbian*, for example, called the BATF policy "hypocritical on its face" and argued that "more information, not less, is the way to encourage better choices."



Bert Grant thought his customers should know the nutritional content of his beer, but the BATF said telling the truth would be misleading.

"Then the coincidences started," Bert recalls. Dunbar, the BATF agent, came back several times to look at the Grants' records and grill the couple and their employees, spending a total of three weeks at the brewery. Sherry says Dunbar, who declines to comment on the case, had an intimidating, confrontational manner. "It scared me, because in the back of [my] mind, there was always this picture of Waco," she says. "And then I got really, really angry, because I thought, 'This is wrong. I should not have to be afraid of my own government.'"

During 1993, Bert estimates, the Grants had to devote about a fifth of their time to dealing with one regulatory problem after another. Among other things, the BATF said they had to get the label for Grant's Celtic Ale reapproved because of a change in color. And the bureau decided that Grant's Spiced Ale, which the brewery had been producing since 1985, had a "frivolous" name that required a generic description—"A Fermented Ale with Added Spices and Honey"—in letters as big as the name.

Worst of all, the alchemists at the BATF transformed Grant's Cider, which the company had been producing since 1984, into a wine by bureaucratic edict. The financial consequences of that trick are serious. Under federal law, hard cider is exempt from excise taxes, but wine is taxed at $1.07 a gallon. The BATF claims that the Grants owe back taxes on the cider-cum-wine for nine years, plus the annual occupational tax for wineries, plus interest, plus penalties.

The bureau has not yet informed the Grants what all that will come to, but it could be hundreds of thousands of dollars. For a small business like Yakima Brewing & Malting, which produces about 9,000 barrels a year, that would be a significant hit. And the tax liability is in addition to some $100,000 in legal fees and lost sales that Bert estimates the hassles with the BATF have already cost the brewery.

The Grants feel they are being punished for criticizing the bureau's censorship. "It doesn't matter what you do for a living," Sherry says. "You still have a right to free speech. And I shouldn't have to worry about the government coming down on me for what I think or say."

The BATF denies any link between the Grants' recent troubles and the conflict over nutritional information. "There is no conspiracy," says Les Stanford, a BATF spokesman in Washington, D.C. "There is no connection between the two issues." Whether or not the BATF decided to retaliate against the Grants, their case illustrates the arbitrary power that the agency wields over brewers, vintners, and distillers. Entrepreneurs like the Grants operate in an environment of uncertainty created by vague regulations, inconsistent enforcement, unpredictable policy changes, and capricious decisions that apply retroactively. Long before the Waco fiasco made the BATF notorious, producers of alcoholic beverages had reason to fear the bureau.

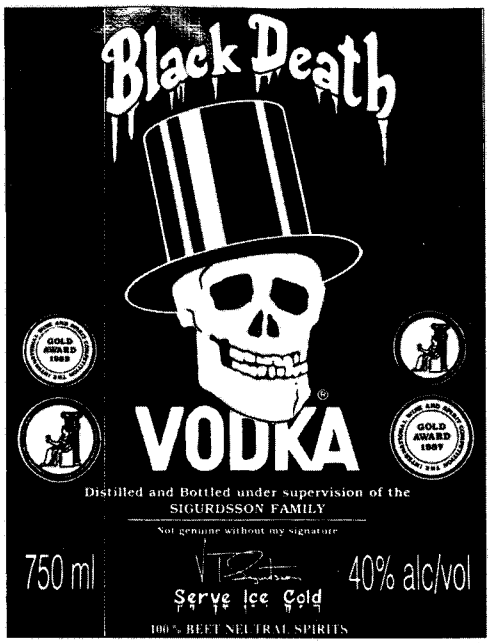
"If you know how the average citizen feels about the IRS, the industry is in even greater fear of the ATF, because they have such awesome power over their very existence," says Jerry Mead, editor and publisher of *The Wine Trader*. "They can yank your license. You can appeal, but so what? You're out of business....If you piss them off, they can come in and audit your books. Even if they don't find anything wrong, they totally disrupt your [operation] for days, sometimes weeks, going through everything. And the ATF probably could find something wrong with just about anybody's operation, if they were really looking."

In the case of Yakima Brewing & Malting, practices the BATF had known about for years suddenly and inexplicably became violations. The bureau had never before complained, for example, that Grant's Spiced Ale, a name that seems straightforward and descriptive, was in fact "frivolous." Furthermore, as Sherry Grant notes, the BATF continues to allow the use of many fanciful beer names—including Pete's Wicked Ale, Labatt's Blue, and Blackened Voodoo—without demanding special explanations on the labels. "Tell me they're not picking on us," she says.

This combination of fuzzy rules and selective enforcement is

YAKIMA BREWING & MALTING

an invitation to abuse. While ostensibly pursuing its regulatory mission, the BATF can punish businesses for criticizing the bureau or offending the wrong people. In 1992, for example, the BATF threatened to rescind its approval of labeling for Crazy Horse malt liquor after then-Surgeon General Antonia Novello called the name "an insensitive and malicious marketing ploy" aimed at appealing to Native Americans. Since the bureau is not supposed to pass judgment on the propriety of target marketing, it cited a different concern: the use of three phrases on the label—"Fine Blend," "Lot No. 0690711," and "Registered at the Brewery"—that it considered confusing or misleading. These phrases had apparently escaped the BATF's attention when it approved the label two months before.



In 1989 the BATF approved the label for Black Death vodka. Three years later, after the surgeon general took offense at the product, the bureau decided the label was illegal.

A similar reversal involved PowerMaster, a malt liquor that the BATF approved in 1991. Like many other malt-liquor brands, PowerMaster was aimed mainly at inner-city blacks, but it attracted special attention because it had a higher alcohol content than its competitors. After Novello called the product "socially irresponsible" and anti-alcohol activists expressed their outrage, the bureau decided that the word *Power* was a veiled reference to alcoholic strength, which brewers are not allowed to advertise. It instructed G. Heileman Brewing Co. to remove the word from the product's name. The brewer, which had spent more than $2 million on research and marketing, decided to scuttle the venture.

Another company that the BATF targeted for political incorrectness was not so compliant. In 1989 Federico Cabo acquired the right to import Black Death, an award-winning European vodka distilled from beets. The BATF approved the product's label, which shows a grinning skull wearing a black top hat. Cabo subsequently spent over $1 million to promote and market the vodka, and in 1992 he bought worldwide rights to the brand for $3.3 million in cash and guaranteed royalties. That same year, Novello and other critics started worrying aloud that Black Death USA's marketing tactics, which included coffin-like vodka boxes and the slogan, "Drink in Peace," would appeal to young people and encourage alcohol abuse. The BATF decided to take another look at the Black Death label.

In April 1992 Terry Cates, chief of the BATF's Industry Compliance Division, sent a letter to Cabo, ordering him to stop selling Black Death vodka within 10 days. Cates explained that the label violated BATF regulations in two ways. First, he said, the skull and the name, which Cates interpreted as an allusion to bubonic plague (it's actually a translation of an Icelandic slang term for distilled spirits), create the misimpression "that the product is inherently unsafe for human consumption at any level." At the same time, he wrote, the label "mocks the real health risks which may result from the consumption of alcohol by making an obviously false claim about the dangers of alcohol consumption," thereby undermining the surgeon general's printed warnings.

Cabo challenged the BATF's decision in federal court and won by summary judgment. In October 1992 the U.S. District Court for the Northern District of California ruled that the BATF had violated the Due Process Clause; that it lacked statutory authority to revoke a label approval three years after granting it, except in exceptional circumstances; and that it had acted "arbitrarily and capriciously," in violation of the Administrative Procedure Act.

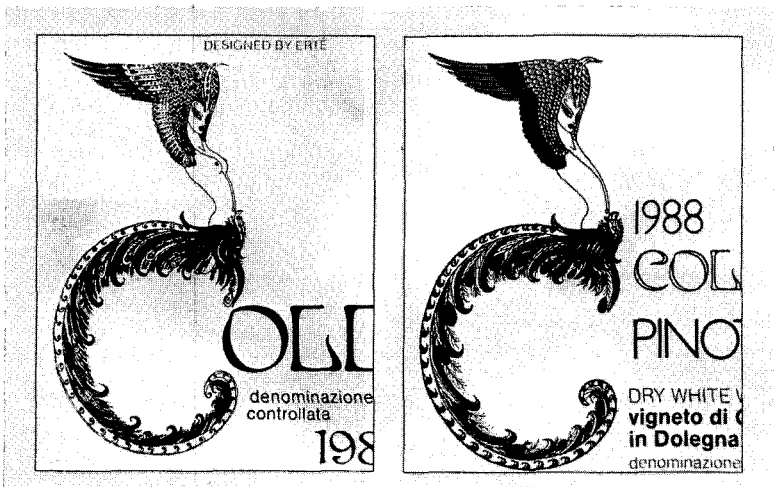
"Not only does it defy common sense to believe that the use of the term 'death' in conjunction with the image of a grinning skull overcomes the otherwise clear indications on the bottle that the product contains vodka," U.S. District Judge D. Lowell Jensen wrote, "but the two reasons put forth by the BATF for revoking the label are contradictory. The BATF claims that the 'Black Death' label mocks the dangers of alcohol such that consumers will believe that alcohol is not dangerous, while also claiming that consumers will believe that the vodka is inherently unsafe for consumption." The judge found the BATF's behavior so egregious on other grounds that he did not consider the free-speech implications of banning the brand, except to say that "the government's prohibition of the 'Black Death Vodka' label strikes at the heart of the first amendment."

A 1981 case in the U.S. District Court for the District of Columbia confirms the potential to overturn BATF actions on First Amendment grounds. The Taylor Wine Company had developed a low-calorie, low-alcohol product called Taylor California Cellars Light Chablis. The bureau said it would be misleading for Taylor to call the wine "light" while promoting its lower calorie content, since federal regulations define *light* to mean simply that a wine has an alcohol content of 14 percent or less. The judge, Aubrey E. Robinson, found that the BATF did not have legal authority to reject the Taylor label for this reason. Even if

JONATHAN NOUROK

it did, he said, "prohibiting Plaintiffs from disclosing the caloric content of the wine is clearly unconstitutional. Plaintiffs' attempt to disclose the information is accorded first amendment protection."

Similarly, the U.S. Court of Appeals for the 10th Circuit last year ruled that brewers have a right under the First Amendment to tell consumers the alcohol content of their products. Ostensibly to prevent "strength wars," the Federal Alcohol Administration Act forbids the listing of alcohol content on containers of beer unless state law requires it. In 1987 the Adolph Coors Company proposed labels for Coors and Coors Light that included alcohol content. After the bureau rejected the labels, citing the statutory prohibition, Coors sued. The appeals court agreed that the government has a legitimate interest in preventing "strength wars" but concluded that the labeling restriction "does not advance this interest in a direct and material way....The Government simply has not shown a relationship between the publication of such factual information and strength wars." The court therefore overturned the rule as "an unconstitutional restraint on commercial speech in violation of the First Amendment."



Citing "upthrust and very evident" breasts on the label (left), the BATF blocked sales of Collio Wine. A revised label (right) later won approval.

These successful challenges stand out in an industry where timidity is the rule. Because of its power, the bureau usually gets its way, no matter how slight the justification for its orders. In 1986, for instance, the bureau blocked the sale of Collio wine from Italy because the bottles had labels that included a drawing of a nude woman by the artist Erté. The BATF cited its authority to prohibit "obscene or indecent" representations. "The breasts on this label were upthrust and very evident," a BATF spokeswoman told *The Wall Street Journal*. "If the picture had been a masterpiece, it would have been allowed, but it wasn't, so it's obscene." Bowing to the bureau's artistic judgment, the wine's importers applied gold paint to 4,000 bottles, covering up the woman with a "low-cut, modern swimming costume," which won BATF approval in May 1987. The next year's batch of Collio bore a new label, featuring a flat-chested version of Erté's nude woman.

Sometimes the BATF doesn't even bother to explain its orders. In 1988, with clearance from the BATF, California's Robert Mondavi Winery started running this statement on some of its bottles: "Wine has been with us since the beginning of civilization. It is the temperate, civilized, sacred, romantic mealtime beverage recommended in the Bible. Wine has been praised for centuries by statesmen, philosophers, poets and scholars. Wine in moderation is an integral part of our culture, heritage and the gracious way of life." In 1990 the BATF instructed Mondavi to change the statement, striking the word *sacred*, excising the reference to the Bible, and inserting the word *family's* between *our* and *culture*. "We never got any reasons," says Harvey Posert, spokesman for the winery. "There's nothing in the law that says you can't say wine was recommended in the Bible. It *was* recommended."

Incidents like this one show that BATF regulation is driven by anti-alcohol ideology as well as bureaucratic zeal. Under pressure from neoprohibitionist groups such as the Center for Science in the Public Interest, the bureau actively fights industry attempts to say good things about beer, wine, or liquor. "There have been many inquiries regarding the inclusion on wine labels of statements which make therapeutic or curative claims, or which otherwise attribute positive effects to the consumption of wine," Jerry Bowerman, head of the BATF's Product Compliance Division, said in a 1990 letter. "These statements imply that the consumption of wine is beneficial to society and is recommended by religious authorities, without mentioning any of the possible harmful societal effects arising from the consumption of wine."

In this view, the surgeon general's warnings on every bottle and the anti-alcohol messages that saturate the media are not enough to provide balance. Every positive statement requires a corresponding warning. That attitude is reflected in the BATF's policy regarding health claims. Federal regulations forbid any statement about "curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression." But the bureau's interpretation says that "all therapeutic claims, *regardless of their truthfulness*, [are] inherently misleading and particularly deceptive in view of the possible social effect of encouraging the consumption of alcoholic beverages by those who for psychological or physical reasons are adversely affected thereby." (Emphasis added.)

As Berkeley, California, wine importer Kermit Lynch could tell you, the BATF construes "therapeutic claims" rather broadly. Since November 1989, a federal law has required wine importers to affix a label with the now-familiar government warnings about the dangers of alcohol to every bottle they sell. Trying to provide

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a counterpoint to these dire admonitions, Lynch asked the BATF for permission to quote Thomas Jefferson on the label: "Wine from long habit has become an indispensable for my health." He also suggested quotes from Louis Pasteur ("Wine is the healthiest, most hygienic beverage known to man") and 1 Timothy ("Drink no longer water, but use a little wine for thy stomach's sake"). The bureau said the quotes violated the rule about therapeutic claims.

In 1991 Lynch tried again with a different Jefferson quote: "Good wine is a necessity of life for me." After issuing a series of contradictory rulings, the BATF rejected the quote, arguing that it misleadingly implied both a health benefit and a judgment about the wine. In December 1992, Lynch wrote the bureau a letter in which he noted that "Jefferson has been dead for two centuries," and "no one would imagine that he had tasted or was judging a wine currently for sale." He also argued that the quote could not reasonably be construed as a health claim and concluded: "I think your office should proceed with caution when deciding whether Thomas Jefferson's writing is too dangerous to be read by the American public." Whether worn out by his persistence or shamed by his arguments, the bureau finally agreed to let Lynch use the quote.

The BATF looks askance at industry attempts to publicize the large and growing body of scientific evidence that moderate alcohol consumption reduces the risk of heart disease. In 1992 Leeward Winery in Ventura, California, summarized the relevant studies in its newsletter. The bureau told Leeward to stop distributing the newsletter, which the bureau considers a form of advertising.

The BATF also looks askance at industry attempts to publicize the large and growing body of scientific evidence that moderate alcohol consumption reduces the risk of heart disease. In 1992 Leeward Winery in Ventura, California, summarized the relevant studies in its newsletter. The article included excerpts from a 1991 *60 Minutes* story, "The French Paradox," that suggested daily consumption of red wine accounts for the fact that the French have a lower rate of heart disease than Americans despite a diet that is relatively high in fat and cholesterol. In March 1992 the BATF told Leeward to stop distributing the newsletter, which the bureau considers a form of advertising. The bureau also told Robert Mondavi to stop using bottleneck tags quoting from the *60 Minutes* story.

Yet that October, the BATF approved a similar "neck-hanger" proposed by World Wine Estates of St. Helena, California, which owns the Beringer and Napa Ridge brands. Like the Mondavi tags, the neck-hanger quoted from "The French Paradox," but the bureau felt the excerpts presented a balanced picture. (One of the physicians quoted on the tag mentioned "the tremendous problems of alcohol abuse.") A month after getting clearance from the BATF, the winery announced that it would not use the tags after all.

"There were objections to our neck-hanger by a few federal agencies," says Doug Roberts, director of financial services for World Wine Estates. "We had a clear indication that it would not be warmly received."

Roberts doesn't want to be specific—"it's still a very sensitive issue in Washington," he says—but the agencies that might have taken an interest include the Food and Drug Administration, the Federal Trade Commission, and the surgeon general's office. Legally, the winery did not need to get approval in advance from anyone—even the BATF, since a neck-hanger is not considered part of the label. But a prudent winery tries to avoid problems by getting permission for any move that might be controversial. "Until we have some kind of clear direction," Roberts says, "we don't want to expose ourselves to the wrath of any agency."

Meanwhile, Leeward and about 10 other wineries have formed a group called the Coalition for Truth and Balance to negotiate guidelines with the BATF for discussing health benefits. So far the bureau has not approved any of the statements that the coalition has come up with. But it has agreed to allow wineries to reprint and distribute, in its entirety, a four-page pamphlet called "Moderate Drinking" from the National Institute on Alcohol Abuse and Alcoholism. The government pamphlet includes three paragraphs on the evidence that moderate drinking reduces the risk of heart disease. Posert, the Mondavi spokesman, says the pamphlet is "a little large for a label," but maybe "you could make a paper bag out of it and put a bottle of Fumé Blanc in there."

The Wine Trader's Mead dreams of a simpler approach. "There ought to be two rules," he says. "If it's true, you can say it. If it ain't true, you can't say it. Other than that, you don't need any rules. The ATF doesn't see it that way."

Nor is the bureau likely to be convinced that it should narrow its focus. As Sherry Grant discovered, regulators can be expected to view their mandates as broadly as possible. She says her experience with the BATF "changed me from a person who trusted her government into a person who looks at government with a jaundiced eye. I lost my innocence."

Jacob Sullum is managing editor of REASON *and a big fan of Grant's Scottish Ale.*

RECYCLING RUBBISH

Why Germany's "market-oriented" recycling scheme can't transform trash into treasure

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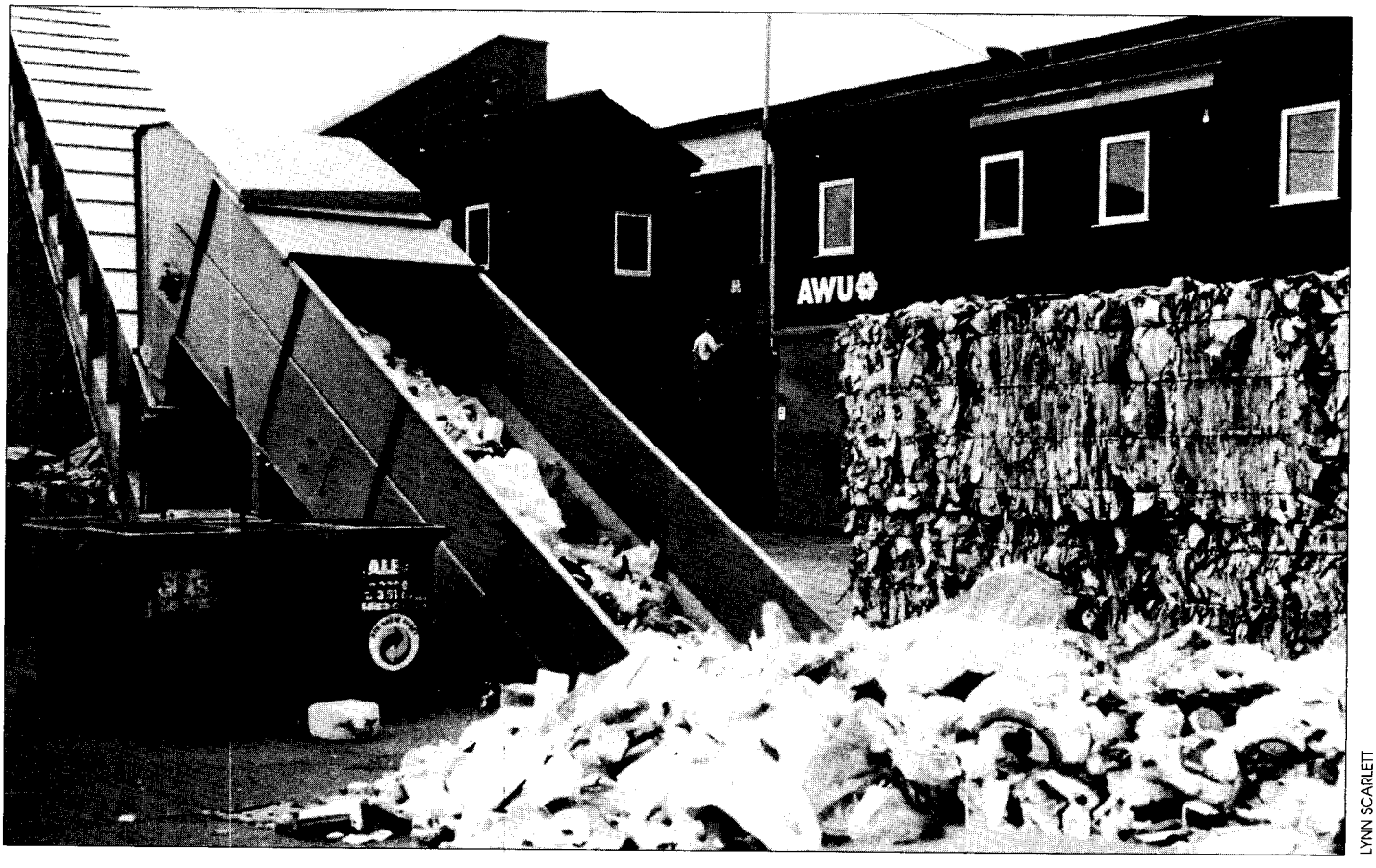
By Lynn Scarlett



LYNN SCARLETT

It looks like garbage: bits of torn paper, piles of plastic stuff, crumpled aluminum foil, squashed cans, broken glass. It even smells like garbage—not as bad as the odor at some landfills, but a detectable putrid aroma nonetheless. It is, however, *not* garbage. Not, at least, according to German law.

These mountains of miscellany, some stacked neatly in towering bales and some amassed in great heaps, have become "valuable materials" by edict of the German government. Now workers sort through the stuff as it pours down a conveyor belt; they separate the plastic from the glass, the aluminum from the paper waste. "For us," says a manager at a Berlin waste sorting facility, "the hard part is the 'light fraction'—the plastics and composite paper packaging. We basically have rows of workers separating different package types by hand."

In 1991, riding a wave of waste-avoidance sentiment, Klaus Topfer, Germany's minister of the environment, declared waste a useful resource. The German legislature then approved a law making whoever places a package into commerce responsible for taking it back. Passed on June 12, 1991, the Packaging Ordinance requires manufacturers or retailers to "take back" their packaging or ensure that 80 percent of it is collected rather than thrown out. Then 80 percent of what's collected has to be reused or recycled.

The ordinance covers all packaging, around 150 billion individual packages discarded each year in Germany, about 40 percent of the country's garbage. That translates into 12 million tons of material: yogurt containers, toothpaste tubes, detergent boxes, chip bags, bottles, boxes, pallets, wrappers.

The law would have required every supermarket, every drug store, every auto-parts retailer, every stationery shop to accept customers' garbage. Appalled at the prospect of transforming retailers into waste handlers, consumer-product manufacturers came up with an alternative way to satisfy the law's requirements. They established a consortium—Duales System Deutschland—to collect the packaging waste. To fund the DSD, manufacturers charge themselves for each package sold. Those who pay the fee put a special "green dot" logo on their packages, indicating that consumers should discard them in industry-sponsored collection bins.

The green-dot program costs more than $2.5 billion a year—more than $100 for a household of four, an amount that approaches the taxes or fees already paid for regular waste-collection service. And that money covers collection costs only. It does not include the cost of redesigning packages and changing production systems. *Waste Environment Today*, a British trade publication, reports that real consumer prices for some packaged products have jumped 13 percent since the take-back law took effect. And one consumer-products manufacturer suggests that set-up costs to meet the take-back requirements come to more than 1 percent of total revenue. Yet even though the DSD handles virtually all packaging waste, municipal waste collection costs have declined only slightly.

Not all of the trash collected is usable. About 1.2 million tons of German sales packaging is made of plastics. When Germany's take-back system got fully underway in 1993, Germans began tossing this plastic into the provided yellow containers beyond all expectations. By year's end, close to half of the plastic packaging had been collected—but not recycled. Some of the stuff began showing up at landfills in neighboring France. Some even made its way to Bulgaria. The rest—some 100,000 tons—has piled up in warehouses.

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Germany's experiment has captured the imaginations of recycling advocates throughout the world. "The German concept," says one commentator in *BioCycle* magazine, "has totally swept Europe." The take-back idea has also gained favor in the United States. The Recycling Advisory Council, an arm of the National Recycling Coalition funded partly by the EPA, included the concept in a list of recommended recycling policies for the United States. And in 1992 Sen. Max Baucus (D-Mont.), chairman of the Environment and Public Works Committee, drafted a bill patterned after the German ordinance. Although the bill did not come to a vote that year, Baucus is likely to resurrect it in future legislation.

"If recycling is going to survive and even prosper, we will need to do more—much more," Baucus told a meeting of the U.S. Conference of Mayors and the National Association of Counties last year. "The cornerstone of my strategy rests on the principle that I call manufacturers' responsibility for the life-cycle of a product....Anyone who sells a product should also be responsible for the product when it becomes waste." President Clinton seems sympathetic to this argument. During his campaign he said, "I would support a market-based system to make manufacturers and importers pay more of the cost of disposing of the goods they produce."

The take-back idea has much popular appeal. Everyone is against waste. It seems so...well, wasteful. And pinning responsibility on manufacturers lets consumers off the hook. It makes consumers victims of packaging forced on them by capricious manufacturers—a view adopted by many U.S. environmentalists. "Packaging manufacturers unthinkingly foist millions of dollars of expenses onto us all every day," Allen Hershkowitz of the Natural Resources Defense Council recently told *The New York Times*.

Defining packaging as pollution generated by manufacturers makes the take-back idea seem compatible with the economically (and emotionally) satisfying "polluter-pays" principle. It appeals to the current rage for "market-oriented" environmental

policies. If packaging is indeed pollution—if it is an externality, to borrow from economics lingo—Topfer's ordinance is a way of fixing a market failure. It forces manufacturers to take full account of the costs they are imposing on others. Writing in the June 1993 *Atlantic*, Hershkowitz explicitly applies this model to the take-back concept. The aim, he says, is "making the price of [waste] collection and utilization internal to each product," thereby giving manufacturers "an incentive to reduce the amount of garbage they build into their products."

Workers at a Berlin plant sort packaging trash by hand as it flows down a conveyor belt.

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By making consumer waste part of a manufacturer's cost calculations, its proponents argue, Germany's take-back law harnesses the innovation and efficiency of the private sector. "A positive aspect of the packaging ordinance is its aiming at free-market solutions," says Birgitta Grotemeyer of Interseroh, a German company that collects transport packaging. "It prescribes the objective, but not the way leading to the objective. Thus, companies are free to choose the best and cheapest way."

But a mandatory take-back program is anything but a free-market policy. Packaging is not a cost imposed on others, like toxic chemicals dumped into a river or vehicle exhaust released into the air. To the contrary, packaging is voluntarily owned at each step from production through consumption to disposal. Consumers are responsible for the costs associated with purchasing and discarding the packaging. If they litter, they are subject to penalties. If they throw out the packaging, they have to pay for waste collection. Local governments frequently undermine the incentive to avoid excessive packaging by subsidizing waste collection through taxes and failing to charge households according to how much trash they generate. But this is a public-policy failure, not a market failure.

In short, the take-back model is based on a fundamental misconception. It treats what should be a consumer cost as if it were an externality. The experience with Germany's green-dot program, the first comprehensive scheme of its kind, illustrates the problems that arise when people with a weak grasp of economics try to reorganize property rights in the name of the environment.

"Germans wanted waste avoidance," says Helmut Fischer of Procter & Gamble. "They wanted to achieve avoidance of landfills and incinerators at any cost. This is ideology, not science."

Making manufacturers responsible for taking back packaging has had some of the effects environmentalists wanted. A walk up the toiletry aisle of Tengelmann, a German grocery store, reveals some packages that are unfamiliar to most Americans. Gone are just about all toothpaste boxes. Instead, bare tubes stand on their caps in permanent display holders. The detergent aisle brings more surprises: no more sturdy, brightly colored plastic (high-density polyethylene) bottles. Instead, cardboard sleeves wrap very thin plastic containers of liquid detergent.

For consumer-products manufacturers, some of these changes mean real savings on materials. Procter & Gamble is buying 25 fewer tons of cardboard per year just because it has eliminated the outer carton around denture cleaner. P&G's newly packaged Fairy Ultra detergent will mean a 45-percent cut in raw material consumption. And refillable cartons sometimes result in a 90-percent reduction in packaging.

But for all the hoopla surrounding the program, its overall impact is modest. Up and down the Tengelmann aisles, most boxes, jars, cans, and bottles look like their counterparts in U.S. supermarkets. The numbers confirm this impression. In late 1993, the German environment ministry announced packaging waste reductions of 500,000 tons since passage of the packaging ordinance in 1991. That's a half million tons out of 12 million tons of packaging waste, or 4 percent. This amounts to a 1.7-percent reduction in Germany's total municipal waste. Take into account the 200 million tons of industrial waste generated in Germany each year, and the reduction comes to 0.22 percent. And even this reduction cannot be attributed solely to the packaging ordinance.

One reason for the unimpressive results is that secondary packages—allegedly unnecessary outer boxes or wrappers that are often targeted as evidence of excessive packaging—actually make up a tiny part of overall packaging. In Germany, these outer containers produce less than 0.5 percent of the 12 million tons generated annually. Of the rest, 9 million or so tons is sales packaging: the soda bottles, food cans, yogurt pots, and so on that preserve, protect, and contain the product. The balance is transport packaging.

Peter Hindel of Procter & Gamble questions whether the recent packaging changes seen in Germany can be entirely, or even primarily, attributed to the take-back law. "Packaging developments," he argues, "are driven by consumer demands—by our understanding of what consumers are looking for and the options available." He notes that much the same kind of packaging changes are occurring throughout Europe and the United States, even in the absence of take-back laws. "We are seeing a higher percentage of refillables in Holland—without a take-back system—than in Germany," he says. "Consumers are demanding

LYNN SCARLETT

less packaging. If there are consumer reasons to make a change, then we would do it."

Hindel concedes that Topfer's take-back ordinance may accelerate this process. "It may change purchasing patterns faster than might otherwise have occurred," he says. "But I think we have to ask whether the ordinance influenced manufacturers, or whether Topfer set the public-relations context so that consumers more readily accepted packaging changes."

This is not merely manufacturer hype. One need go no further than the aisles of a typical U.S. grocery store to see that consumer choices matter when it comes to packaging. Orange juice, for example, comes in concentrate form, recyclable glass bottles, coated cardboard refrigerated containers, plastic bottles, and little boxes. It comes in just about every imaginable size, including 8-, 10-, 16-, 64-, 96-, and 128-ounce containers. Even refill systems for some juices are beginning to appear.

If consumers pay trash-disposal charges, waste generation becomes one of several concerns that influence their purchasing choices. These choices, in turn, will influence manufacturing decisions. The German take-back system instead imposes the disposal costs on manufacturers, who pay an "advance disposal fee" or pay to take back packaging. Regardless of who is responsible—consumers or manufacturers—reduction of packaging becomes a design objective. But that does not mean that the two systems are equally efficient. By reassigning ownership of packaging from consumers to manufacturers, the take-back law has generated huge new costs.

> A mandatory take-back program is anything but a free-market policy. Packaging is not a cost imposed on others, like toxic chemicals dumped into a river or vehicle exhaust released into the air. Consumers are responsible for the costs associated with purchasing and discarding the packaging. If they litter, they are subject to penalties. If they throw out the packaging, they have to pay for waste collection. Government often undermines the incentive to avoid excessive packaging by subsidizing waste collection. But this is a public-policy failure, not a market failure.
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Sitting in his ground-floor office overlooking walls of stacked garbage, Andreas Mönnig reflects on the changes the take-back law has brought. Now working for the DSD, he has been in the waste-management business for many years, collecting trash under contract with German cities and towns. "People put out their waste in trash bins; we picked it up," Mönnig says. "Then we disposed of it. Mostly in landfills—70 percent, in fact. About 25 percent was incinerated."

Even before the take-back law, this had been gradually changing. In most German towns and cities, residents could deposit in special drop-off bins glass containers and newsprint for recycling. But most packaging went into the standard trash bin. That has now changed dramatically.

Mönnig points out the window to a row of the DSD's yellow bins. One bin smiles back, a grin and eyes painted across its front. "Our recycling family," he says. "We have 120,000 to 130,000 bins out there serving Berlin's 2.5 million inhabitants." In 1992, before the take-back law took full effect, Mönnig's company collected some 257,000 tons of materials in the recycling bins; in 1993, it collected 358,000 tons.

Measured by the amount of material collected in the recycling bins, the DSD program is a resounding success. Germans shifted nearly 6 million tons of their trash from the municipal bins—destined for disposal—to the yellow DSD bins. In July 1993, Environment Minister Topfer proudly announced that Germans "are the trash collectors of the world."

But not all of that trash was usable. About 1.2 million tons of German sales packaging is made of plastics. When the DSD system got fully underway in 1993, Germans began tossing this plastic into the yellow containers beyond all expectations. By year's end, close to half of the plastic packaging had been collected—but not recycled. Germany had a manufacturing capacity to absorb less than 200,000 tons of this plastic detritus. Some of the stuff began showing up at landfills in neighboring France. Some even made its way to Bulgaria. The rest—some 100,000 tons—has piled up in warehouses.

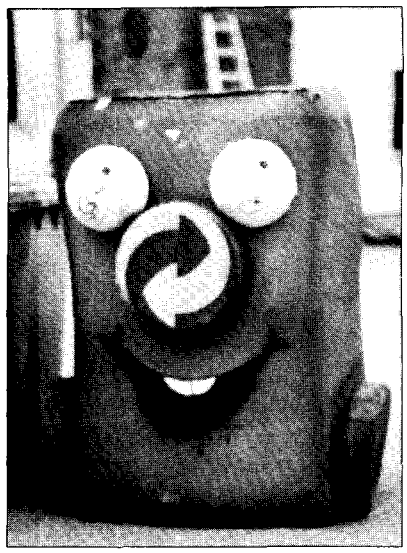
Topfer, undeterred by this warehoused plastic, proclaimed to the German public: "Don't be led astray by these reports of mountains of waste. It's quite right and proper that there should be such a mountain, so carry on filling those yellow sacks."

The cost of recycling that plastic is exorbitant: about $1,700 per ton, and that's excluding some of the especially hard-to-handle plastic discards. By contrast, traditional disposal of plastics costs less than $500 per ton in Germany (and about $100 a ton, on average, in the United States). Furthermore, at 85 cents per pound, recycled plastic is not at all competitive with virgin plastic, which costs around 30 to 40 cents per pound. Allowing hydrogenation of plastics, which turns them back into a basic chemical feedstock, would make recycling much cheaper, but it would still require a subsidy of about $310 a ton.

A more fundamental puzzle is how to avoid a cluster of free-rider problems caused by the take-back scheme. Consumers, who pay a direct fee for regular trash pickup but not for what they discard in the DSD's yellow bins, find them a convenient place to put waste, whether it carries the required green dot or not. "The results of our waste-sorting test were disappointing," Mönnig admits. "About 40 percent of what we have been collecting in the yellow bins is not green-dot material." Some of what's collected is packaging that doesn't carry the green dot.

Some of it is non-packaging paper. But some of it, says one DSD official, "is just garbage: dead dogs, shoes, rubbish."

Manufacturers, too, abuse the program. Some companies underreport how much packaging they actually sell, so they pay lower fees. Others display the green dot on their products without paying the DSD at all. DSD officials estimate that 90 percent of all packaging sold now carries the green-dot logo. Yet the DSD is collecting fees for only 50 percent to 60 percent of packaging. By August 1993, just eight months after full implementation of the DSD system, it was nearly bankrupt. The industry-created DSD company was getting only 60 cents in packaging fees for every dollar it paid haulers to collect waste from the yellow bins. Collection programs to take back transport packaging—the boxes, pallets, and crates used to deliver products to retailers—faced the same free-rider problems.



A DSD recycling bin: Justified as a way of eliminating externalities, the German program actually creates them. Consumers do not pay to dispose of the trash they improperly put in the DSD's bins. Free-riding manufacturers do not pay for the packaging they now, by law, "own." In effect, the yellow bins are a modern-day commons; everyone has an incentive to use them without restraint.

For waste haulers, DSD contracts were a bonanza. Initially, they were paid by the total tonnage they collected. They had no incentive to monitor the contents of the yellow bins, taking only appropriately labeled green-dot material. In any event, they had no feasible way of knowing which manufacturers had actually paid the appropriate fees. "We have a lot of cheating," Mönnig concedes. Haulers sometimes bill the DSD for two to three times what they actually collect, sort, and market. "It's a problem with paper, glass, and especially the 'light fraction'—plastics, laminated packages, and so on," he says.

Procter & Gamble's Hindel calls this a "critical design flaw of DSD." The program produces the "slush fund syndrome," he says. "If you have a pot of money available, people will find ways of getting as much of it as possible."

For proponents of the DSD, all these difficulties are simply the inevitable costs of translating a radical new theory into practice. "We had so little time to get the system up and running," says the DSD's Dieter Uhlig. "We had to start the whole country all at once. We had no time to get experience by testing different programs." His colleague, Ursula Denison, concurs. "Because of the tight deadlines, we were under pressure to reach *any* agreement possible with waste managers," she says. "We got blackmailed in 1992."

In truth, these problems are a predictable result of severing ownership from possession for billions of items that change hands daily. Justified as a way of eliminating externalities, the German program actually creates them. Consumers do not pay to dispose of the trash they improperly put in the DSD's bins. Free-riding manufacturers do not pay for the packaging they now, by law, "own." In effect, the yellow bins are a modern-day commons; everyone has an incentive to use them without restraint.

Manufacturers have scrambled to patch the take-back system. Interseroh, which collects transport packaging for the furniture, electronics, and plumbing industries, is requiring that a contract number be printed on each transport carton. This attempt to cut down on free-riders will further raise collection costs, since more time will be spent checking the contract numbers.

Facing near-bankruptcy last summer, the DSD introduced additional enforcement measures and revised its contracts with haulers. The DSD will pay haulers a maximum of 40 marks (about $25) per capita a year, rather than a fee based on tonnage collected. This change will reduce cheating by haulers, but it won't address free-riding by consumers. That would require haulers to check the yellow bins more carefully before carting away their contents, which would raise collection costs.

The DSD is also collaborating with retailers to collect money from packagers who have failed to pay their green-dot fees. Worried that a DSD failure will put them in the waste-collection business, retailers have agreed to deduct the green-dot fees from invoices and pass the money on to the DSD. Again, collecting and managing the information to make this work will generate new costs.

Even more alarming than these costs is the intellectual laxity of the take-back scheme—the misapplication of concepts such as pollution, externalities, and free markets. Just about everyone—retailers, consumers, politicians, even many manufacturers—now embraces the concept of "manufacturer responsibility." "The law is OK," says Interseroh's Grotemeyer. "We just have to work out better how to implement it."

But the law isn't OK. It isn't OK because it rests on the mistaken ideas that packaging is pollution and consumers are victims. If market institutions and economic concepts are to have any useful application in mitigating environmental problems, we are going to need more clarity of thought about how and why property rights function, the relationship of those rights to externality problems, how prices emerge, and the connection between prices and resource use. The law cannot turn bad theory into good practice, any more than it can transform trash into treasure. ®

Lynn Scarlett is vice president for research at the Reason Foundation.

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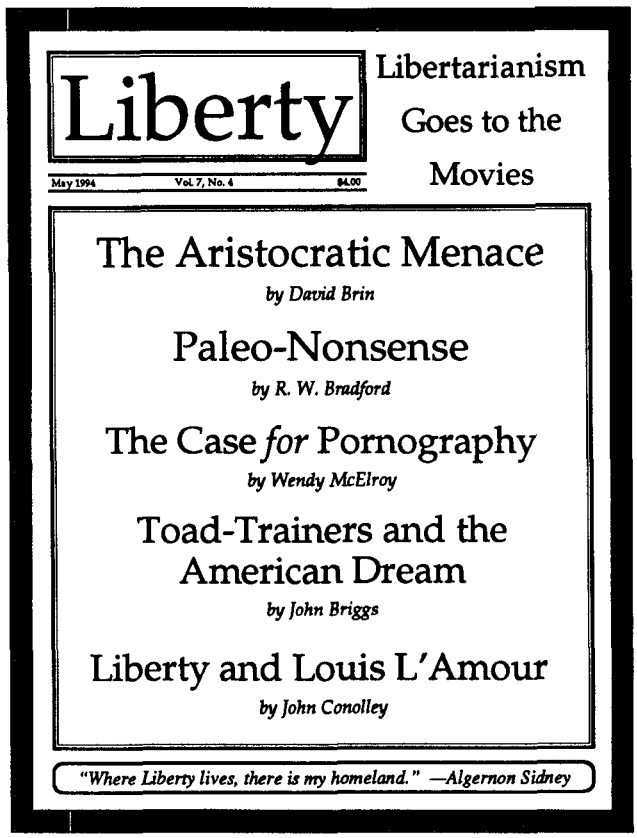

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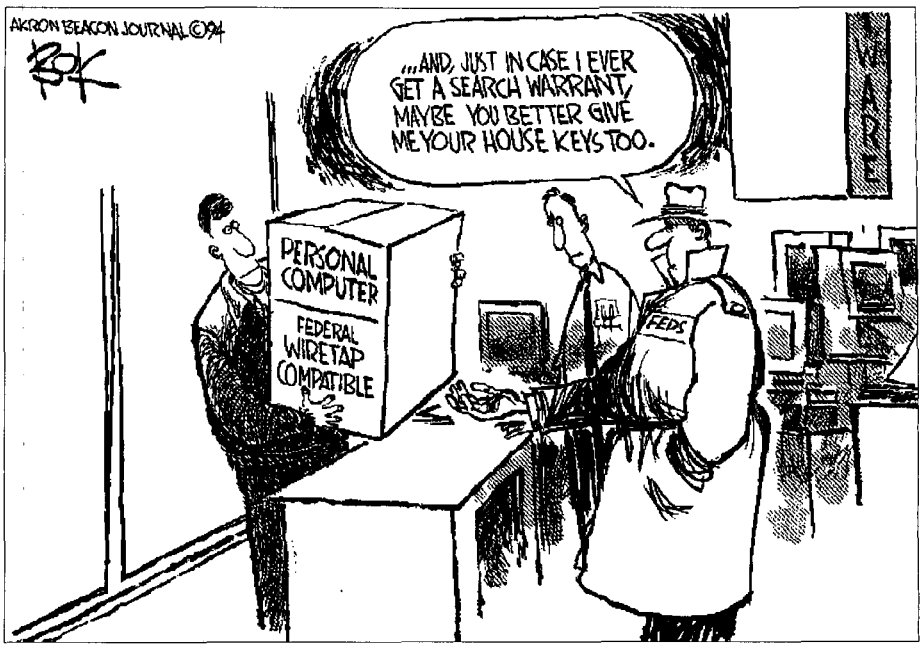
Code Blues

By Ronald Bailey

Phil Zimmerman gave electronic privacy protection to the masses, and for that he may go to jail.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CHIP BOK

In 1991 Phil Zimmerman developed a software program called Pretty Good Privacy (PGP), designed to shield electronic information from prying eyes, and gave it away for free. Zimmerman, a Boulder, Colorado, software consultant, thereby provided unbreakable "military-grade" encryption to the masses. After he released PGP, someone put it on the Internet, making it available, with a few keystrokes, to the whole world. In a short time, PGP could be found in London or Moscow. This has upset some powerful people in Washington, especially the National Security Agency.

Agents from the U.S. Customs Service visited Zimmerman in February 1993 to ask him about the "export" of PGP. Under the current interpretation of the International Traffic in Arms Regulations, cryptographic software like PGP is classified as "munitions" and cannot be legally exported without permission from the federal government. "The mere posting of encryption software is tantamount to exporting it," explains Danny Weitzner of the Electronic Frontier Foundation.

Zimmerman says he has been told that he is the primary target of an ongoing federal grand-jury investigation. In September, he says, an encryption company was served with a subpoena to produce documents related to "ViaCrypt [the commercial version of PGP], PGP, Philip Zimmerman, and anyone or any entity acting on behalf of Philip Zimmerman for the time period June 1, 1991, to the present." Assistant U.S. Attorney William Keane, who is in charge of the grand-jury investigation, says he cannot comment on an ongoing case, but there may be "some activity shortly."

If Zimmerman is convicted of "exporting munitions," he could go to jail for four years. He would probably view himself as a political prisoner. "I didn't do it to make money," he says. "I did it to inoculate the body politic." In October he told a congressional subcommittee: "When making public-policy decisions about new technologies for the government, I think one should ask oneself which technologies would best strengthen the hand of a police state. Then, do not allow the government to deploy those technologies. This is simply a matter of good civic hygiene."

Zimmerman believes the expansion of digital communications networks could pose a serious threat to individual liberty. He makes the point by contrasting how government agencies can monitor regular mail with how they can sift through electronic mail. Previously the authorities could only intercept and steam open envelopes sent to a few people. This is like using a hook to catch a fish. With the development of data networks, officials can scan thousands of electronic messages simultaneously for key words. This is like using a drift net.

In a move that could help weave such a net, the federal government is trying to persuade the U.S. computer and telecommunications industry to adopt an encryption standard developed by the National Security Agency called the Clipper Chip. The Clipper Chip has a "back door" that allows government officials to tap and decode any messages encrypted with it. (See "Hide and Peek," November 1993.) Spooks and law-enforcement officials say this back door is needed so they can monitor the communications of terrorists, drug runners, and wire-fraud artists. They say ordinary citizens would enjoy the same constitutional protections as in the past, since tapping a phone or reading some-one's e-mail would still require a court order.

"The government has the balance of costs and benefits all wrong," says the EFF's Weitzner. "We grant that there are some number of people who would use cryptography to further illegal acts, but

should we compromise the privacy of all American citizens just to do an ineffective job of trying to police terrorists and mobsters?" Philip Dubois, Zimmerman's attorney, puts it this way: "We can have the kind of country where people can speak freely and privately and take the consequences of that. Or we can have the kind of country where they can't and take the far worse consequences of that."

By creating and disseminating PGP, Zimmerman made it clear which side he comes down on. The program uses an unbreakable algorithm in combination with "public-key" cryptography. In public-key cryptography, everyone has two complementary keys, a public one and a secret one. Each key deciphers the code the other key makes, but the secret key cannot be deduced from the public key. The public key is disseminated widely so that anyone can use it to encode messages to its originator, who decodes them using his secret key. No one but the recipient can decrypt a message sent using his public key, not even the person who encrypted it.

PGP made it easy for the average computer jockey to use public-key cryptography to protect his or her electronic data and messages from snoops, be they government, criminal, or corporate. Zimmerman named his program Pretty Good Privacy as a folksy homage to Ralph's Pretty Good Grocery in Garrison Keillor's mythical Lake Wobegon. He proudly points out that breaking PGP would take "more computing resources than are currently available"—a mathematician's understated way of saying that there aren't enough computers on earth to break it.

Versions of PGP, including the updated PGP 2.3a, are widely available throughout the Internet. (Those interested in getting a freeware copy of PGP can obtain a list of sites by contacting Hugh Miller via e-mail at hmiller@orion.it.luc.edu. For news updates on encryption issues, contact Internet Usenet newsgroups alt.security.pgp, talk.politics.crypto, and sci.crypt.) ViaCrypt, the commercial version of PGP, can be purchased at your local computer software store. Indeed, a wide variety of software with encryption capabilities is available at stores, from mail-order houses, and on computer bulletin boards. Anyone can buy such programs or download them; they can be carried or mailed out of the United States on a floppy disk or blipped via modem to anywhere in the world.

CLEARLY, THE CAT IS OUT OF THE BAG. Yet the feds are frantically trying to stuff it back in. "The National Security Agency's opposition is the last vestige of a Cold War bureaucracy holding on," Weitzner says. "After all, what's their mission now?" Zimmerman adds, "The NSA views this as their twilight of the gods, their Armageddon." (Asked about PGP, NSA spokesperson Judi Emmel says, "It is a private encryption technique and it is not our place to comment on it.")

With the spread of Zimmerman's encryption program, the cat is out of the bag—and the feds are trying to stuff it back in. "The NSA views this as their twilight of the gods," says Zimmerman. "Their Armageddon."

Cryptography used to be something the NSA could control because it was very expensive and the government could break just about any code that could be used affordably. The sole purpose of the super-secret agency is signals intelligence: monitoring communications and deciphering codes. Every year that the NSA delays the widespread adoption of unbreakable encryption is another year in which the agency can provide intelligence to government officials and justify its budget.

Over the long term, however, cryptography is simply too important for the NSA to have its way. "I hope that the administration understands the devastating importance this has to expanding the information superhighway," Weitzner says. "People need to know that their communications on it are secure."

Computer companies strongly oppose the Clipper Chip, arguing that its adoption would dampen exports of American products. After all, why would foreign customers want to own computers or software with encryption systems designed for U.S. government access? Some members of Congress realize the growing importance of encryption to the computer industry. Rep. Maria Cantwell (D-Wash.) introduced a bill last November that would liberalize export controls on software with encryption capabilities. In introducing her bill, Cantwell noted that American software companies stand to lose between $6 billion and $9 billion annually in sales to foreign customers because of the government prohibition on encryption exports. A similar bill has been introduced in the Senate.

The Electronic Frontier Foundation is organizing an electronic mail campaign to support the Cantwell bill. "If we lift export controls, it will make really stupid ideas like the Clipper Chip obsolete," says Weitzner. It would also probably end Zimmerman's legal troubles. Meanwhile, his lawyers have created a fund to help pay his legal bills. (Information about the fund can be obtained by contacting his attorney via e-mail at dubois@csn.org.)

Lately Zimmerman has been working on a voice encryption system that would turn every multimedia computer into a secure telephone. Expected to be available later this year, the system could spell the end for wiretaps. Zimmerman sees it as a logical follow-up to PGP. "PGP empowers people to take their privacy into their own hands," he says. "If privacy is outlawed, then only outlaws will have privacy." ®

Contributing Editor Ronald Bailey is the author of ECO-SCAM: The False Prophets of Ecological Apocalypse, *which will be issued in paperback by St. Martin's Press this spring. He is the 1993 Warren Brookes Fellow in Environmental Journalism at the Competitive Enterprise Institute and the producer of Ben Wattenberg's new national weekly PBS TV series,* Think Tank.

North Exposure

By John Hood

Senate candidate Oliver North runs hot on populism and cold on character.

The New Jesse Helms? Courting his national constituency, Oliver North announced his Senate candidacy on CNN's *Larry King Live*, not at a Virginia press conference.

WHEN RETIRED MARINE Lt. Col. Oliver North announced his candidacy for the U.S. Senate in Virginia on January 26, he didn't hold a press conference in Richmond or a political rally in Roanoke or a fundraiser in Fairfax. He went on *Larry King Live*. "The professional politicians, the insiders, that live in this city are non-responsive to the very real problems that exist out there," North told King and millions of viewers across the country (few of whom will ever have a chance to vote for him). "Quite frankly, I would not be doing this...if I had not been so encouraged by so many people who asked me to do it."

North didn't mention this, but many of those encouraging him to run (and funding his campaign) live in places like Phoenix, San Diego, and Seattle. His national fund-raising letters are simultaneously maudlin and caustic, punching the appropriate hot buttons. A recent missive refers to his 22 years of service in the U.S. Marine Corps, including four years at the National Security Council: "During that time I was concerned with protecting America overseas. Now I would like to volunteer to protect and defend America from those who would try to undermine America from WITHIN."

Some people eat this stuff up. North is "a God-fearing man," contributor Michael Scott of Corpus Christi, Texas, told *The Washington Times*. "He realizes that government is out of control and in trouble." Percy Harris, 71, of Cloudcroft, New Mexico, told the *Times* that "anyone who can set those dyed-in-the-wool bureaucrats on their heads during that long Iran-Contra mess, and make them look silly, we need very badly." On the strength of numerous small contributions (averaging $40) from people like Scott and Harris, North had already taken in over $1.5 million by early February.

With instant celebrity status, access to the national media, and a large data base of people across the country from whom to solicit support, North is vying for more than just a chance to combat Democratic Sen. Chuck Robb in the fall campaign. "North won't just be Virginia's senator, he'll be the senator for an entire branch of conservatives," says Robert Holsworth, chairman of the political science department at Virginia Commonwealth University in Richmond. North is poised to inherit the mantle of stalwart conservatism currently owned by another Southern politician skilled at national organizing and fund raising. "North is the new Jesse Helms," Holsworth proclaims. Of course, North Carolina's Helms—love him or loathe him—is known for telling the truth. That's not exactly North's claim to fame.

VIRGINIANS AREN'T TOO excited about their choices for Senate this year. The two likely nominees are carrying heavy baggage. North has Iran-Contra and Robb has Miss Virginia, drug parties, and staff members skilled at wiretapping. Both score high negatives in state public-opinion polls. Still, Republicans don't seem as intent on winning Robb's seat as one might have expected. While Republican Sen. John Warner has been critical of North, no high-profile party leaders stepped up to the plate to contest the nomination. Most probably thought North was unbeatable and didn't want to make an enemy for life.

That leaves the unenviable task of challenging North's national political ascendancy to an unlikely first-time politician: Jim Miller, former head of Ronald Reagan's Office of Management and Budget. Miller has some national firepower of his own. Several prominent alumni of the Reagan administration, such as former Secretary of State George Shultz and former Attorney General Ed Meese, have endorsed Miller and attacked North's credibility and *bona fides*. And on February 17, 14 high-ranking military retirees held a press conference in Arlington to denounce North as lacking the character and integrity to serve as senator. "We can do better than Oliver North," said retired Marine Maj. Gen. Ron Beckwith.

AP/WIDE WORLD PHOTOS

Still, Miller's national endorsements will get him only so far in the nomination battle, because Virginia still holds true nominating conventions rather than primaries. The Republican convention is scheduled for June 3, so North and Miller are racing to attract the commitment of enough delegates to get the nod. The delegates are party organizers, religious activists, and local elected officials—exactly the kind of crowd North appeals to. He's campaigned for some of them and sold books and newsletters to the others.

At a meeting of Christian Republican activists in Fairfax County in early February, North and Miller struggled to get to each other's right on such issues as gun control, abortion, the National Endowment for the Arts, and home schooling. Actually, on abortion Miller has North beat: He'd make all abortions illegal except those to save the life of the mother, while North favors rape and incest exceptions. "Obviously, we've got two conservative Republicans here," said Mike Farris, last year's GOP nominee for lieutenant governor, after the forum.

IDEOLOGICALLY, NORTH IS A CLASSIC populist—blasting Washington careerists, quoting folk wisdom, endorsing term limits and other popular referenda of recent months, and manipulating power symbols such as the flag and the Marine Corps. Miller touts many of the free-market ideas you'd expect from the former chairman of Citizens for a Sound Economy, the Washington-based free-market lobby. Miller was trained in public choice economics under Nobel laureate James M. Buchanan and helped engineer declining budget deficits during Reagan's final three years in office. In a May 1989 interview with REASON, Miller proposed setting a firm limit on the size of government as a share of gross national product and requiring a super-majority of both houses of Congress to expand government spending beyond that limit. He also endorsed privatizing federal loan programs, public housing, and the U.S. Postal Service.

But campaigning for convention delegates requires more than good ideas and solid connections. It requires charisma, and Miller will be the first to admit he's not God's gift to the chicken-and-pea circuit. He jokes about his less-than-telegenic appearance, noting that staff members urged him to take his own picture off the campaign brochures. *The Washington Post* commented that "stylistically, Miller often sounds more like a bean counter than a politician" and frequently "lapses into academic jargon." North, on the other hand, exhibited early in his career the ability to mesmerize and persuade that many Americans first saw in the televised Iran-Contra hearings. He's just as good on the road. "He's probably the best stump speaker I've seen in a decade or more," says Holsworth, the political scientist.

The conventional wisdom is that North's solid, unshakable core of supporters will carry the day in the GOP nomination. But there's always room for the unexpected at nominating conventions—and North's vulnerabilities are legion.

The conventional wisdom is that North's solid, unshakable core of supporters will carry the day in the GOP nomination. But there's always room for the unexpected at nominating conventions. Even if North swamps Miller in local party caucuses, Miller may still secure as many as one-third of the committed delegates. Many other delegates will be uncommitted and thus open to persuasion all the way until June 3. And North's vulnerabilities are legion. In addition to retaining the taint of scandal, he may run the risk of focusing too much on the national scene and not enough on state and local concerns, the perception of which helped to sink former Gov. Doug Wilder's political fortunes.

THEN THERE'S THE QUESTION OF CREDibility. Republicans and Democrats alike are widely circulating a piece by Rachel Wildavsky of *Reader's Digest* titled "Does Oliver North Tell the Truth?" In the article, Wildavsky relates many instances in which North has claimed one thing (such as a close relationship with former President Reagan) and witnesses, most of them conservatives, have reported something else. North's problems on the character issue limit his effectiveness when he lobs charges of immorality against his probable Democratic rival (whom he calls "Charles the Robb"). Robb is "least vulnerable to North" on character issues, Holsworth says.

Miller is making the best case he can: that despite today's poll numbers and North's celebrity status, he's the candidate most likely to beat Robb. But North's stature as a conservative standard-bearer for the 1990s may insulate him from Miller's attacks during the nomination fight. Like Helms before him, North is well-suited to the task of attracting and maintaining the support of disaffected voters who don't much care what others—particularly the political establishment or the media—say about their hero. Indeed, the more extreme the criticism this kind of politician attracts, the easier it is to portray himself as victim of powerful forces scheming to "get" him.

At the Fairfax meeting of Christian GOP activists, Miller said, "If you elect me your U.S. senator, I won't make commitments to people that, to carry them out, would violate federal law." With North looking on, the crowd responded with stone-faced silence, punctuated by occasional hisses. ®

Contributing Editor John Hood is vice president of the John Locke Foundation in Raleigh, North Carolina, and a syndicated columnist.

Killing Kindness

By Thomas Szasz

Jack Kevorkian believes we can solve moral problems by medicalizing them.

THE ACT OF KILLING MAY BE DEEMED good or bad, depending on who kills whom and why. When a man shoots an intruder about to attack him, we condone the killing as self-defense. When a bandit shoots a bank teller, we condemn the killing as murder. However, when a person kills himself, we are confused about whether to regard his act as good or bad and instead classify it as mad.

Although priests no longer consider suicide a mortal sin, and lawmakers do not punish it as an offense against the state and hence a crime, psychiatrists now diagnose it as a symptom of a mental illness and hence incarcerate the unsuccessful or would-be suicide as a "dangerous" mental patient. Regardless of our moral judgment of the act, suicide is by definition a type of homicide. Like any homicide, we may judge suicide to be justified or unjustified, virtuous or wicked, sane or insane, depending on the circumstances and on our own values.

It is against this background that we must view Dr. Jack Kevorkian's crusade for physician-assisted suicide as a state-approved "right" and "treatment." Since Kevorkian's recent announcement that he has abandoned his campaign of law defiance, and instead has undertaken a campaign of "law reform," he is more dangerous than ever. His aim is ominous because it taps into one of our most powerful popular delusions, namely the belief that we can solve moral problems by medicalizing them. Maintaining that the so-called right (of a terminally ill patient) to physician-assisted suicide is more fundamental than our established constitutional rights, Kevorkian wants it encoded in the constitution of the state of Michigan. And because this right is, in fact, a service, he wants it guaranteed—that is, provided—by expanding the medical profession's legally recognized repertoire of treatments to include doctors helping patients to commit suicide.

To grasp the threat of Kevorkian's purported compassion and the seemingly widespread popular support for it, it is necessary to remember the long history of medicine's war on freedom and self-determination. In Plato's *Republic*, he explained "that our rulers will have to make considerable use of falsehood and deception for the benefit of their subjects. We said, I believe, that the use of that sort of thing was in the category of medicine."

Before approving physician-assisted suicide as a treatment, we need to confront the ethical challenge of suicide itself. As matters stand, suicide is in a moral-legal limbo. It is a right: The act is not prohibited by the criminal law. It is not a right: Expressing the intention to commit suicide or attempting to do so is prohibited and punished by the mental-health laws (by psychiatric incarceration and involuntary "treatment"). In other words, suicide is a right in principle, but not in practice: The "right" is annulled by mental illness, a condition now attributed virtually automatically to the suicidal person as well as the successful suicide (which is why he is no longer refused religious burial in consecrated ground).

Next, we must distinguish between a person's assertion that he wants to die and the act of ending one's life. Speech is richly nuanced, especially in emotionally charged situations. In the final analysis, actions alone count. Unless a person kills himself—by his own hand, preferably alone—we cannot be certain he wanted to die. The potential abuses of a tax-supported service of physician-assisted suicide—especially for old people—are too obvious to require detailing.

FINALLY, WE MUST DECIDE WHETHER WE want to retain or reject the time-honored moral principle that the physician, qua physician, should not kill or assist in killing another person. If abstaining from such behavior—like abstaining from having sex with patients, except more so—is an integral part of the physician's role, then physician-assisted suicide is a contradiction in terms. On the other hand, if such behavior is deemed permissible or even praiseworthy—because of the patient's consent or request—then it is not unreasonable to entrust doctors with the task of assisting persons who want to kill themselves.

It is important to keep in mind in this connection that Kevorkian rejects the view that suicide is a basic human right. He believes that suicide is justifiable only when a person experiences intense suffering caused by a fatal illness, both the nature of the illness and the severity of the suffering being judged by the doctor. Even then, Kevorkian does not support the sufferer's right to kill himself—say,

HENRY PAYNE

by having access to lethal drugs. Instead, he advocates giving doctors the professional privilege—and, by implication, the professional duty—to help persons kill themselves.

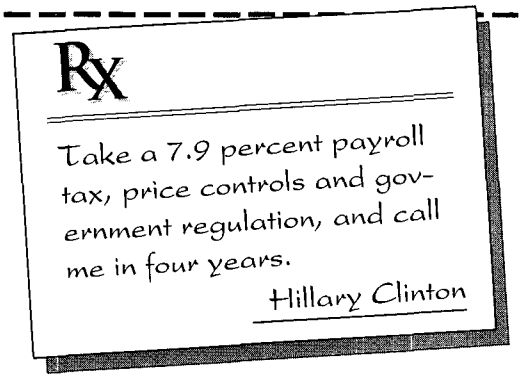
But the fact is that neither killing another, nor killing oneself, nor helping a person kill himself requires medical expertise. Giving a person a drug to help him commit suicide is like giving him liquor to help him become drunk. Actually, Kevorkian's proposed practice of "medicide" closely resembles the execution of a death-row inmate by lethal injection. Both interventions depend on the use of drugs, the main difference between them being that one form of drugging is carried out with the subject's consent (ergo, it is a treatment), and the other is carried out without his consent or against his will (ergo, it is a punishment).

Although this is an important distinction, it does nothing to resolve our dilemma. The desperate plea of a person in pain, deprived by drug laws of adequate analgesics, is a poor imitation of consent. Conversely, an individual may commit a capital crime because he wants his life to end, may not experience death as a punishment, and may request execution. Moreover, we accept treatment without consent as legally proper (typically in psychiatry), and we do not accept consent as sufficient justification for transforming an ordinary act (such as sexual intercourse) into a medical treatment.

Judging by the published reports, the persons whom Kevorkian has "assisted" could have ingested a fatal dose of a lethal drug, had they had access to such a drug and the courage to use it. The fact that drugs useful for committing suicide are now available by prescription only is a cultural-legal artifact. Prior to 1914, lethal drugs, like other consumer products, were available in the free market. Not by coincidence, suicide was then considered to be the act of a moral agent, not a symptom of a mental disorder or a treatment for an agonizing illness.

Kevorkian deserves credit for his candor: He wants physician-assisted suicide to be a new medical specialty, "medicide." This gauche neologism should serve as a warning. Terms such as *herbicide*, *insecticide*, and *infanticide* illustrate the linguistic rule that, by adding to a noun the Latin suffix *-cide*, we identify the living thing killed. *Medicide* therefore means "killing doctors" or "killing medicine" (in Latin, *doctor* is *medicus*, and *medicine* is *medicina*). *Nomen est omen.* ℞

Contributing Editor Thomas Szasz, professor of psychiatry emeritus at the SUNY Health Science Center in Syracuse, New York, is the author of numerous works on drug and mental-health policy. His forthcoming book is Cruel Compassion *(Wiley).*



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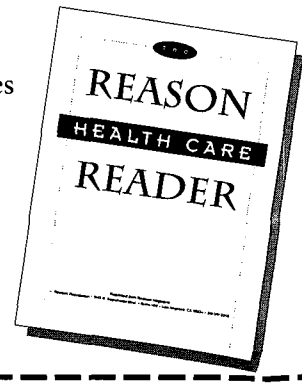

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Meek Previews

By Nick Gillespie

A guide to the new-and-improved TV lineup

UNDER PRESSURE FROM THE federal government, the cable television industry recently agreed to monitor its programs for violent content (it remains, however, steadfastly opposed to monitoring programs for *entertainment* content). And the broadcast networks, which began running advisory warnings before shows last July, are pledged to have a similar system in place by this fall.

While the TV industry's Neville Chamberlain impersonation plays well with some would-be dictators—Sen. Paul Simon (D-Ill.) characterized the plan as a "breakthrough"—other despots-in-waiting are not so easily appeased. Sen. Ernest Hollings (D-S.C.)—who previously demonstrated an encyclopedic knowledge of popular culture by referring to *Beavis and Butt-head* as *Buffcoat and Beaver*—has told reporters that Congress has "got to act" and that he is ready to hold hearings on the constitutionality of his TV violence bill. Hollings's bill would bar violent programming during hours when children are likely to be watching. No word yet if the senator's characterization of black African leaders as "cannibals" is suitable for children.

Attorney General Janet Reno, who has characterized advisory labels as "itty-bitty steps" and who admitted on *The MacNeil/Lehrer NewsHour* that she had written a movie script about a 14-year-old boy whose crack addict mother eventually goes to law school, is likely to press for further regulation. The lurking agenda goes beyond proscribing TV violence to using the medium as the means to teach our children well. As President Clinton, in terms uncannily reminiscent of Pa Kent's counsel to Superman about responsibility, told a group of Hollywood movers and shakers, "You have the capacity to do good, culturally to help the way we behave, the way we think of ourselves."

Harried...By Censors: Fox filmed but did not air an episode of *Married...With Children* in which Al testifies before the Senate in favor of his favorite show, *Psycho Dad.*

The new, improved TV will no doubt be the equivalent of bran cereal—mushy, good-for-you, packed with (moral) fiber—and feature more uplift than a cross-your-heart bra. Below is a speculative look at the shapes of shows to come.

Ratings: *S/MU*: spiritual or moral uplift; *ISS*: implied safe sex; *WW*: win-win solution to intractable social disease or problem; *ALG*: ameliorated liberal guilt; *VATCOT*: violence avoided through court-ordered therapy; *PCMM*: potentially contradictory moral message; *RPSE*: reinforcement of positive self-esteem.

SUNDAY

Mystery, She Wrote. Cabot Cove is engulfed by a wave of anonymous charitable gifts. The mayor asks Jessica to investigate so that the donors can be honored in a public ceremony. **S/MU, ALG**

The Sunday Night Movie: Blowing Up in Beverly Hills. A made-for-TV movie based on an actual event. After two troubled siblings (real-life brothers Emilio Estevez and Charlie Sheen) contemplate murdering their wealthy but insensitive parents, they decide instead to go to court. While attending mandatory therapy, the family explores and heals deep-seated conflicts. Inspired by the trial of Lyle and Erik Menendez. Dr. Goodfellow: Alan Alda. First of two parts. **S/MU, VATCOT, RPSE**

Married...Happily with Children. After Jefferson and Marcy's house is repossessed by a greedy banker, Al contacts Habitat for Humanity. Special appearance by Jimmy and Rosalyn Carter. **S/MU, ISS**

MONDAY

Geraldo. "Neo-Nazi Skinhead Makeovers: Skull and Clothes—and Then Some!" Hair stylist Christophe and fashion maven Mr. Blackwell create new looks as therapist John Bradshaw analyzes relevant family issues. **S/MU, WW, RPSE**

Monday Night Touch Football. Longstanding but friendly rivals the Dallas Cowpersons travel to the nation's capital to take on the Washington Native Americans in a divisional matchup. Halftime show: Ben & Jerry introduce their newest flavor, Spotted Owl Spumoni. **S/MU**

Murphy Brown. An out-of-hand practical-joke war has tragic consequences after Murphy agrees to do an anti–single motherhood spot with former Vice President Dan Quayle (played by himself). **S/MU, WW, PCMM**

COLUMBIA PICTURES TELEVISION

TUESDAY

Roseanne. After Roseanne admits that men and kids are OK, Jackie marries the father of her child. In an effort to reduce national health-care spending, Dan starts a diet-and-exercise plan but becomes grumpy during fast-food withdrawal. **S/MU, ISS, PCMM**

NYPD Blue. Realizing that most law-enforcement situations are incredibly complex, the force learns non-confrontational policing strategies from an elderly FBI agent who was once J. Edgar Hoover's lover (Buddy Ebsen). Kelly and Janice go to Coney Island and ride the Cyclone fully clothed. **S/MU, WW, ALG**

WEDNESDAY

Runaway with the Differently Abled. Snorkeling in Antigua with Stevie Wonder; Marlee Matlin and Lou Ferrigno travel to Niagara Falls' Cave of the Winds; *Life Goes On*'s Chris Burke tours the National Gallery and Smithsonian in Washington, D.C. Host: Robin Leach. **S/MU**

Melrose Place. Billy and Alison decide they should stop sleeping together until they are married. Amanda and Jake decide they should stop sleeping together until their test results are verified. Jo shoots and kills Reed in self-defense and decides to stop sleeping with him. After Michael and ex-wife Jane reconcile, they decide they should stop sleeping with other people. When increased efficiency in state-run health care eliminates Matt's job at the hospital, he finds work at a local condom store. **S/MU, ISS, WW**

THURSDAY

The Simpsons. For his Eagle Scout community service project, Bart develops a workable plan to convert Springfield's nuclear power plant into a solar facility. Guest voice: Vice President Al Gore. **S/MU, WW, RPSE**

American Playhouse: Young Mr. Clinton. "In Doobie-ous Battle." While protesting the Vietnam War in England, Bill smokes marijuana without inhaling. Part 12 of 15. Next week: "To Russia with Love." **S/MU, ISS, PCMM**

L.A. Law. Douglas finally signs on to a plan to turn McKenzie-Brackman into a non-profit legal defense clinic. Stuart realizes the political justification of his beating during the L.A. riots and agrees to defend his attackers when the state brings new charges against them. Under the Americans with Disabilities Act, Benny makes partner. **S/MU, ALG, RPSE**

FRIDAY

Pay Per View: Howard Stern's Full-House Slumber Party. Full House's Ashley and Mary Kate Olsen join family-man D.J. Stern and his three daughters for an old-fashioned evening of songs, skits, and shenanigans. Highlights include sing-a-longs to "Row, Row, Row Your Boat" (Ashley, Mary Kate, the Stern girls) and "Thank Heaven For Little Girls" (Howard, Ashley, Mary Kate), "phony" phone call to Cody Gifford, and Jr. Miss Howard Stern Beauty & Scholarship Contest. **S/MU, RPSE**

Beavis and Buddy. The boys critique "gangsta rap" videos while attending a boot camp for juvenile offenders. **S/MU, VATCOT, PCMM, RPSE**

SATURDAY

Robert Reich's Money World. (Formerly *Adam Smith's Money World.*) Top-down income redistribution programs that really work. **S/MU, WW, ALG**

Night at the Movies: The Program. Special director's cut. In this new version of the 1993 Disney release, a down-on-his-luck coach (James Caan) gets the best effort possible from his talented-but-cocky players in a charity badminton match for pediatric AIDS. Edited for TV. **S/MU, RPSE**

Saturday Night Lite. Host: Reformed comedian Andrew "Nice" Clay. Skits include humorous look at rehab clinics, adolescent "Nice" Clay being picked on by school bully, Branch Davidians as victims of second-hand smoke. Musical guest: Recovering addict Roger Clinton. **S/MU, PCMM** ®

Nick Gillespie is assistant editor of REASON.

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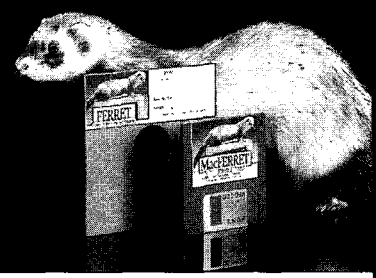


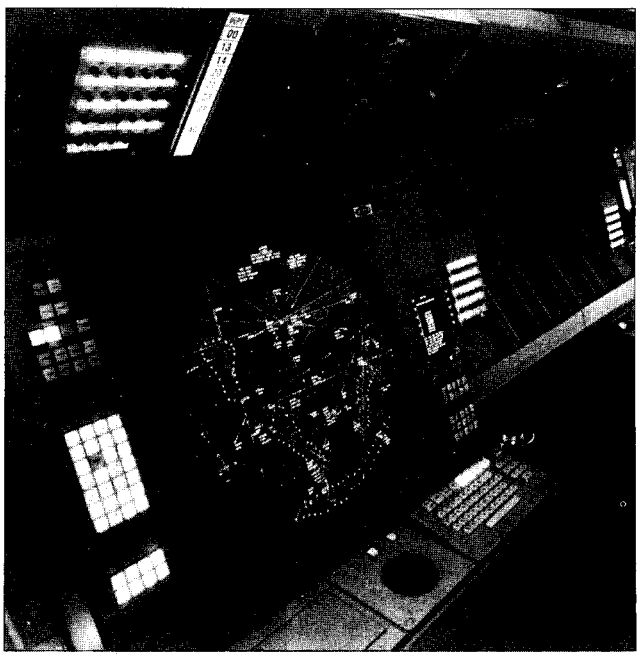
SOFTWARE NORTH

Programming and Design Services

Sky Cops

By Robert W. Poole Jr.

There's a growing consensus that the FAA shouldn't be directing air traffic.



Hampered by budget constraints and red tape, the FAA uses outdated equipment to guide commercial airplanes.

THE NEXT TIME YOU FLY coast to coast, which would you choose: A flight guided all the way by highly skilled air traffic controllers, using the latest high-tech radars, satellite-based navigation, and state-of-the-art computers? Or a system in which the busiest towers and control centers are staffed by some of the least experienced people, running equipment that relies on vacuum tubes, depending exclusively on ground-based radio beacons, and using computers two or three generations old?

You might think the latter description applies to flying across the vast reaches of Russia. But it's actually a description of the current air traffic control system in the United States. What's remarkable about this system, which is operated by the Federal Aviation Administration, is that it functions reasonably safely despite its major shortcomings. It does so by deliberately keeping planes very far apart, holding them on the ground when bad weather threatens, and using other techniques that contribute to millions of hours of flight delays each year. Depending on whose numbers you believe, delays caused by air traffic control cost airlines and passengers between $300 million and $1.5 billion a year.

Despite all this extra caution, the ATC system sometimes breaks down. In February 1991, a USAir 737 landed on top of a commuter plane at the Los Angeles International Airport, killing 34 people. The obsolete ground radar was on the blink (as it often was), so the controller could not see that the commuter plane had taxied onto an active runway, directly in the path of the 737. We fly in blissful ignorance of all the close calls that could have turned out like this one.

After more than two decades of criticism, there's a growing consensus that a tax-funded, bureaucratic agency like the FAA is the wrong kind of institution to operate a vital, high-tech, 24-hour-a-day business like air traffic control. Other countries facing similar problems have successfully transferred air traffic control to government-owned corporations, an approach that was recently endorsed by the Clinton administration. The proposal, which is backed by the airline industry, promises to do away with the budget constraints, micromanagement, civil-service requirements, procurement rules, and conflict-of-interest problems that undermine the ATC system. But corporatization faces stiff opposition from special interests and members of Congress who benefit from the current arrangement.

The environment in which the FAA operates is not conducive to efficiency or safety. Annual budgets are unpredictable and generally less than needed. Unlike a business, the FAA has to fund capital improvements on a pay-as-you-go basis from each year's operating budget, rather than raising money through bonds. Both Congress and the executive branch bedevil the agency with detailed "oversight," often giving contradictory directives and priorities. As a result, the top administrator seldom lasts more than about two and a half years.

In a federal bureaucracy, it's very hard to fire those who aren't cutting it. Moreover, uniform national pay scales dictated by civil-service rules mean chronic shortages of experienced people at high-stress, high-cost-of-living facilities. That's why control towers at the busiest airports—Chicago, Los Angeles, New York—tend to be understaffed, with less experienced personnel.

CUMBERSOME FEDERAL PROCUREMENT regulations have meant chronic problems in attempting to modernize the ATC system. Many years behind schedule and billions of dollars over budget, the system cannot keep pace with rapidly changing computer and electronics technology. By the time a new computer system is procured and operational, it's already obsolete. (This is also why the FAA is the country's largest user of vacuum tubes.)

The FAA is the aviation industry's safety regulator, at arm's length from air-

lines, manufacturers, airports, pilots, and mechanics. But it also operates the ATC system, so it is hardly a disinterested regulator of air traffic control. The agency's role is similar to that of the now-defunct Atomic Energy Commission, which promoted and developed nuclear reactors even while regulating their safety.

The airlines have long been unhappy with this situation. In 1985 they proposed that the ATC system be spun off from the FAA and set up as a user-funded corporation, outside the constraints of civil service, procurement regulations, and the federal budget process. The idea was dead on arrival in Congress and was soon buried.

But it didn't disappear overseas. Virtually all ATC systems are government-run, and most suffer from problems similar to ours. In 1987, as part of its radical reform program, New Zealand's Labour government turned its ATC system over to a commercial corporation funded strictly by user fees, with a private-sector board and a mandate to turn a profit, albeit with the government as its sole shareholder. It worked. Airways Corporation of New Zealand has modernized that country's ATC system at less than half the cost projected by the government, gotten private planes to pay user charges, reduced its operating costs by one-third, and made handsome profits.

Word of New Zealand's success has spread. In 1992 Germany and South Africa enacted ATC corporatization laws that took effect last year. And Switzerland, which had started down this path in 1988, last year revised its plans according to the New Zealand model. Canada's airlines have petitioned Transport Canada to follow suit, and the idea is under serious study there.

Until last year, however, U.S. airlines were unwilling to revive the idea of spinning off ATC. One airline CEO wrote me in August 1992, "I think *all* the major airline CEOs would be in favor of privatizing the FAA's ATC functions. Unhappily...none—myself included—will publicly endorse the idea or strongly pursue it." Why? "When the Secretary of Transportation calls and makes an explicit request that that individual withdraw his support for a particular initiative, it's awfully hard to say 'No.' The reason, of course, is that every airline—and every airline CEO—is subject to the whims of an ever more political regulatory apparatus" for approval of overseas routes.

BUT WITH THE ADVENT OF THE CLINTON administration, the outlook began to brighten. The White House appointed a National Airline Commission headed by former Virginia Gov. Gerald Baliles, who had already identified the ATC system as a major constraint on airline growth. The airlines revived their plan, and the commission backed it in its August 1993 final report, noting that "in the history of American business, no major commercial industry's minute-by-minute operating efficiency has been directly determined by the daily operating efficiency of our federal government—except for the airlines." Meanwhile, Vice President Al Gore's reinventing government commission, the National Performance Review, also endorsed the idea.

Although I supplied information to both bodies, I was still skeptical that they meant what they said. Wouldn't a "government corporation" mean another Amtrak or Postal Service? These federal corporations are neither supported entirely by their users nor free from cumbersome government red tape and bureaucracy. But after meeting Bob Stone, director of the National Performance Review, and some of his staff, I'm guardedly optimistic. Stone says their models for reinventing government were Australia, Britain, and New Zealand. At a conference on ATC corporatization in January, he told the 200 attendees, "When it comes to ATC, to paraphrase JFK, '*Ich bin ein New Zealander.*' "

Why not go all the way to private ownership? Aside from the fact that such a move would not even be considered by Congress, there's the problem that air traffic control is essentially a monopoly. If the system were simply sold to the highest bidder, there would be questions about

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monopoly pricing and, even more sensitive, about access to the system by small-plane users. The Swiss are moving toward a greater degree of user ownership under a nonprofit structure, including shares for airlines, airports, and general aviation groups. But the complexities involved seem best left for another day. For now, the priority of most reformers is to convert the system to user funding and independent corporate status.

IT'S NO SURPRISE THAT THE AIRLINES ARE pushing this idea. Under the current system of user taxes (ticket taxes for airline passengers, fuel taxes for private planes), airlines pay 97 percent of costs, while private planes pay just 3 percent. Yet the small planes use 20 percent to 40 percent of all ATC services, and military and other government aircraft use about 15 percent (but pay nothing). Since they don't want to pay user fees for something they now get essentially for free, the Aircraft Owners & Pilots Association and the National Business Aircraft Association are staunchly opposed to corporatization.

The convention of lumping personal and business flying together as "general aviation" obscures some important differences. Single-engine planes are used primarily for training and recreation. Much of their flying is done from airfields without towers, with no need to file a flight plan. These "little guys" seldom use ATC services. By contrast, multi-engine private planes, especially turboprops and jets, are used mainly for business purposes. A large part of their flying takes place in controlled airspace, imposing real costs on the ATC system. *These* "little guys" ought to fully pay their way.

A recent Reason Foundation study proposed a pricing scheme to do just that. It called for charging fully allocated ATC costs to airlines and corporate private plane users but only marginal costs to the small private flyers (and only when they use specific ATC services). So while a Learjet would pay $88 for an instrument departure, on the rare occasion when a Cessna 172 made such a departure, it would pay $17. (A 757 would pay $182.) Based on current ATC transaction levels, this pricing scheme would have airlines paying 74 percent of ATC costs, corporate plane users 7 percent, small private flyers 5 percent, and government users 14 percent.

To Jack Olcott, president of the National Business Aircraft Association, that would be outrageous. At an Air Traffic Control Association seminar in January, Olcott said such pricing "ignores any public benefit from air traffic control." He also complained that under corporatization there would be "little the public could do to influence aviation policy." In other words, his members would no longer be able to lobby Congress for a free ride at the airlines' or taxpayers' expense.

Privatizing air traffic control would improve safety. The government's outdated ATC equipment is a hazard to air navigation and is held together only by the heroic efforts of overworked and often underpaid controllers and technicians.

The members of Congress on the House and Senate committees dealing with aviation are even more opposed to corporatization. Long accustomed to allocating funds and exercising "oversight" of all aspects of ATC and many aspects of aviation, they would lose much of that influence and power if air traffic control were corporatized. Officially, these senators and representatives are worried about safety. "My first concern is safety," says House aviation subcommittee chair James Oberstar (D-Minn.), "and I do not believe that moving the [ATC] system further away from government control is the best way to ensure safety." That view is echoed by such heavyweights as Sens. Fritz Hollings (D-S.C.) and Wendell Ford (D-Ky.).

But spinning off ATC would actually improve safety. Today's vacuum-tube-based ATC equipment is a hazard to air navigation, held together by the heroic efforts of overworked and often underpaid controllers and technicians. The government's budgetary roulette and nightmarish procurement system virtually guarantee that ATC equipment will remain one or two generations behind the state of the art in computer and communications technology. Furthermore, removing the FAA's conflict of interest by putting the agency at arm's length from ATC operations would strengthen safety enforcement.

ALTHOUGH IT FACES OPPOSITION FROM general-aviation interests and powerful members of Congress, corporatization enjoys the support of not only the airlines but also the air traffic controllers' union, the American Association of Airport Executives, and key administration officials. Washington was taken by surprise when Secretary of Transportation Federico Peña announced early in January that the ATC corporation approach had been selected as the best of three alternatives under internal review. In February FAA Administrator David Hinson strongly endorsed corporatization in a speech at the Aero Club of Washington. And Vice President Gore told a public hearing on February 23 that the administration would "go all out" to create the ATC corporation. Its legislative proposal was expected by April.

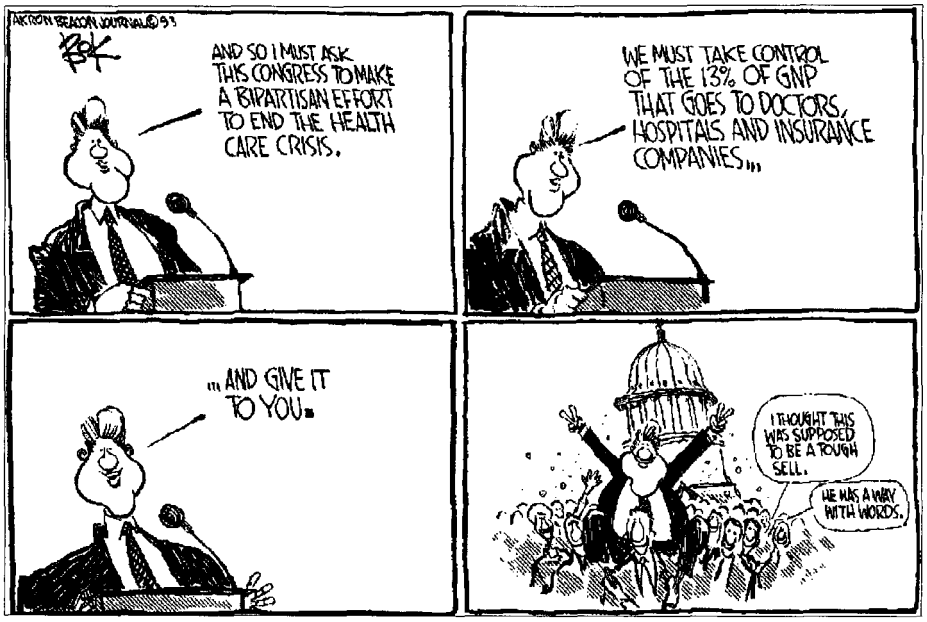
The key variable may be how much political capital the Clinton administration actually decides to expend on this issue. If Clinton and Gore really do go to bat for spinning off ATC, their claim to be New Democrats seeking to reinvent government will gain some credibility. ®

Reason Foundation President Robert W. Poole Jr., a former aerospace engineer, has been researching ATC problems since 1977.

Reality Check

By David R. Henderson

The work of mainstream economists makes the case against ClintonCare.


AND SO I MUST ASK THIS CONGRESS TO MAKE A BIPARTISAN EFFORT TO END THE HEALTH CARE CRISIS.
WE MUST TAKE CONTROL OF THE 13% OF GNP THAT GOES TO DOCTORS, HOSPITALS AND INSURANCE COMPANIES...
...AND GIVE IT TO YOU.
I THOUGHT THIS WAS SUPPOSED TO BE A TOUGH SELL.
HE WAS A WHIZ WITH WORDS.

THERE ARE WELL OVER 500 HEALTH economists in the United States. And believe it or not, they have reached a consensus on certain underlying facts about health care. These facts are largely being ignored in the health-care debate because the Clintons and other advocates of draconian regulation cannot acknowledge them and at the same time plausibly argue for more government.

Opponents of further controls have a powerful ally in the mainstream health economists whose work implicitly or explicitly makes the case against government intervention in health care. Here are the most important facts that these economists agree on.

Fact One: Health-care spending is growing faster that gross domestic product almost everywhere.

We often hear that health-care spending is consuming a growing share of GDP in the United States, but this country is hardly unique in that respect. Take the so-called G-7 countries: Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. In all but Germany, health-care spending consumed a higher percentage of GDP in 1990 than in 1980. The United States led the way, with the share of GDP consumed by health care rising from 9.2 percent to 12.1 percent, a whopping 32-percent increase.

But guess which country was a fairly close second, with its health-care spending rising from 7.4 percent of GDP to 9.3 percent, an increase of 26 percent. Hint One: Proponents of socialized medicine—pardon me, "single-payer health care"—often hold it up as a model. Hint Two: I was born there and left for "the States" when I was 21. Hint Three: This country is directly north of us. Hint 4: Take off, hoser. That's right. Canada, which has "solved" the problem of access to health care by giving it away and which supposedly has kept spending down, has had to contend with massive cost increases.

The Clintons don't want you to know this because, despite the evidence from other countries, they plan to use the police power of the federal government to freeze private real per-capita spending on health care in 1999 and later years. Yet in all of the G-7 countries, including Germany, and in every other Western European country except Ireland, real per-capita spending on health care grew substantially between 1980 and 1990. Indeed, in all but a few, it grew by more than 1.5 percent a year, meaning a compound growth of over 15 percent for the decade. The Clintons would use so-called global budgets to make sure that private spending grew by no more than the consumer price index and the growth in population. And what if an area of the country hit its budget cap for 1999 by, say, October? Tough.

FACT TWO: GOVERNMENT SPENDING ON health care has risen much more than private spending.

We often hear that it doesn't matter whether you look at government spending or private spending on health care because both have risen rapidly in the last few decades. Actually, it does matter. Spending by government on its two main health-care programs, Medicare and Medicaid, has risen much more rapidly than private spending. In 1970 federal, state, and local governments spent $12.3 billion on Medicare and Medicaid combined. By 1991 this was up to $216.7 billion, an inflation-adjusted increase of 427 percent. By contrast, private spending on health care rose from $42.5 billion in 1970 to $377 billion in 1991, an inflation-adjusted increase of 165 percent. To be sure, this is a substantial increase, but it's less than half the increase in Medicare and Medicaid spending.

CHIP BOK

These numbers indicate that the explosion of costs in Medicare and Medicaid is mainly an explosion of government costs. Which makes you wonder why Bill Clinton is not laughed out of court when he says that one main reason he wants the government to control one-seventh of the economy is to keep costs down. Incidentally, the Clintons are aware that Medicare and Medicaid spending are growing faster than private health-care spending. That's probably why their plan has looser limits on Medicare and Medicaid spending than on private spending.

Fact Three: We're getting a better product for our health-care spending.

As Northwestern University health economist Burton A. Weisbrod recently wrote, "Fifty years ago, physicians were little more than diagnosticians..." All they could do was identify an illness and predict the likely outcome. Now they can actually *do* something. Weisbrod cities many effective medical procedures: kidney dialysis, organ transplants, polio vaccines, arthroscopic surgical techniques, CAT scans, magnetic resonance imaging, and in-vitro fertilization. These techniques have undoubtedly reduced deaths and made life easier. There's still a serious question whether they are worth their high cost. But the only reason that question arises is that those who benefit don't typically pay for the bill. Which brings us to the next fact.

Fact Four: The amount of any good people consume is higher if they're spending other people's money than if they're spending their own.

This is not a controversial proposition in economics. It's one of the few principles that economists are really sure of. It applies to food, housing, and, yes, health care. But just to make sure it applied to health care, the U.S. government paid the Rand Corporation to do a five-year, $80-million experiment, beginning in 1974. For a few years, thousands of families in the experiment were given one of four health-insurance plans. The main difference between the plans was the co-payment rate—the percentage of health expenses paid by the family—which was 0, 25, 50, or 95 percent. Under all the plans, if a family's out-of-pocket expenses reached $1,000, the insurance paid for all additional expenses.

The Rand experiment's main finding was that people do consume more health care if they're spending other people's money. The higher a family's co-payment rate, the less often members of that family went to a doctor and the less often they incurred medical expenses generally. The researchers concluded that a catastrophic insurance plan—a plan in which patients pay a high deductible and then the insurance pays all costs in excess of the deductible—would reduce expenditures by about 31 percent relative to a plan in which people paid nothing out of pocket. If you doubt that, ask yourself how likely you are to have a doctor examine your scratchy throat when the insurance company covers $40 of his $50 fee, leaving you with a bill for $10. Now ask yourself how likely you are to see the doctor if you have to pay the whole $50.

The numbers indicate that the explosion of costs in Medicare and Medicaid is mainly an explosion of government costs. Which makes you wonder why Clinton isn't laughed out of court when he says the main reason he wants the government to control one-seventh of the economy is to keep costs down.

Because almost all insured people, whether covered by their employers or by Medicare and Medicaid, pay close to zero out of pocket, we can straightforwardly apply the Rand results to most Americans. Updating the experiment's $1,000 deductible to 1994 dollars gives a deductible of about $2,000 today. If everyone in the United States switched to such a deductible, estimates Harvard health economist Joseph Newhouse, our health-care spending would fall by about 30 percent. Instead of spending over 14 percent of our GDP on medical care, as we do now, we would spend only about 10 percent.

In short, we could get the waste out of the health-care system simply by buying health insurance with high deductibles. And we could get the share of GDP spent on health care to a level way below the one Clinton says he wants to achieve. Clinton doesn't want you to know that high deductibles would solve the problem because his plan makes any deductible higher than $400 per family illegal.

Fact Five: Employers provide low-deductible medical insurance for their employees—with deductibles that often amount to only $200 or $250 per year, after which the insurance pays 80 percent to 100 percent of costs—because the tax law gives them an artificial incentive to do so.

This fact was driven home by my former boss at Ronald Reagan's Council of Economic Advisers, Martin Feldstein. Feldstein, a Harvard professor and a leading health economist in the late 1960s and early '70s, was one of the first to point out that, because employers' contributions to their employees' health insurance are not taxable as employee income, employers have an incentive to load up their employees with health insurance. Consider an employer and employee trying to choose between an extra dollar in taxable wages and an extra dollar of health insurance. If the dollar is in wages, the employer must spend an extra 7.65 cents in Social Security and Medicare taxes. So the real cost to the employer is $1.0765. And the employee gets not $1.00 but $1.00 minus 7.65 cents for the employee's portion of Social Security and Medicare taxes, mi-

nus 28 cents if the employee's federal marginal tax rate is 28 percent, minus 4 cents if the employee's state marginal tax rate is 4 percent. Net take-home pay on $1.00: 60.35 cents.

But if instead the employer pays the dollar in higher premiums for a more generous health-insurance program, the government takes nothing. As long as the employee values the extra dollar in health insurance at more than about 60 cents, he or she is better off taking it in that form. That is one main reason that employers have paid for insurance policies with low deductibles. The employee is better off charging a $50 doctor's bill to the insurance company, even if the insurer spends $20 to process it, and having the employer pay the extra $70 in a higher premium. The alternative, having the employer pay an extra $70 in cash, yields the employee only about $42.

Understanding these incentives, most economists have concluded that more regulation is not necessary to get people out of low-deductible plans. All the government would have to do is end the favorable tax treatment of health insurance. There are two ways to do this. One is for Congress to declare that henceforth employers' contributions to their employees' health insurance are taxable income. The other way is to make a certain amount of compensation—say, $3,000 per employee each year—tax-free income which the employee can use to buy health insurance or put in a medical savings account similar to an individual retirement account.

So is there a health-care crisis? There are actually two. The first, if we had truth in political advertising, would be labeled "Made in Washington." The second is about to be made in Washington. ®

Contributing Editor David R. Henderson is a senior research fellow at the Hoover Institution, an associate professor of economics at the Naval Postgraduate School in Monterey, California, and editor of The Fortune Encyclopedia of Economics. *He served as senior health economist with President Reagan's Council of Economic Advisers from 1982 to 1984.*

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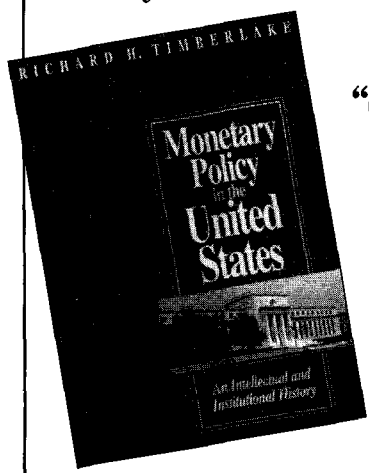

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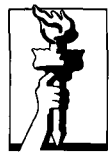

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Banking on Markets

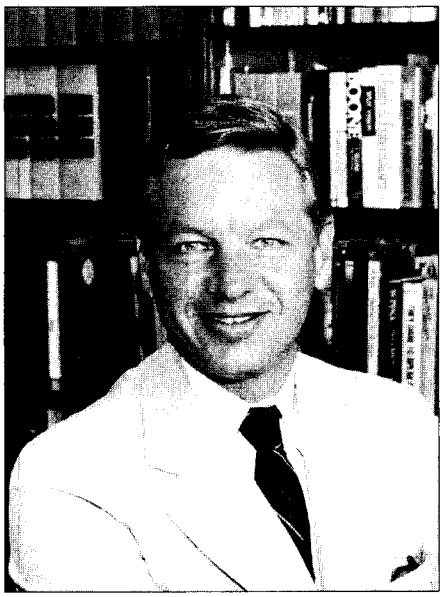
By Cornelius Chapman

After the S&L crisis, deposit insurance gets new scrutiny.

THE FINAL BILL FOR THE S&L CRISIS is being tallied up, and like the bar tab for a drunken night on the town, it is simultaneously sobering and stomach-churning: at least $200 billion in government funds to pay depositors' claims against the Federal Deposit Insurance Corporation and the now-defunct Federal Savings and Loan Insurance Corporation. And on top of that already staggering figure are less obvious costs—such as additional interest payments on the national debt, an overbuilt real-estate market financed by high-risk loans, and losses of personal net worth for people who bought homes shortly before the bubble burst—that will continue to act as a drag on the national economy for some time to come.

Now that the biggest banking crisis since the Great Depression is over, the question in some people's minds is how to reform the system of federal deposit insurance that grew out of the first major banking debacle of this century and was a contributing cause of the second. "The excesses of the 1980s would not have happened without the federal deposit insurance system," says University of Chicago law professor Geoffrey Miller. Federal deposit insurance, he argues, encourages the very behavior—risky lending—that it insures against, just as federal flood insurance encourages people to live in areas that are prone to flooding.

When depositors have recourse to "free" government insurance, they have no incentive to monitor the prudence of their financial institutions, because they cannot lose their money. And if banks are certain that the government will pay off depositors in the event of a failure, lenders have less reason to avoid high-risk ventures (with potentially higher investment returns). In effect, both depositors and bankers are playing an investment game with other people's—the taxpayers'—money.



Rep. Thomas Petri's bill would effectively privatize both deposit insurance and bank regulation.

THE FISCAL IRRESPONSIBILITY INHERENT in federal deposit insurance prompted Rep. Thomas Petri (R-Wis.) to introduce the Deposit Insurance Reform, Regulatory Modernization, and Taxpayer Protection Act (H.R. 3570) late last year. The bill, which has five co-sponsors, would do away with the FDIC's insurance functions, replacing them instead with "cross-guarantee" contracts by which other banks, insurance companies, pension funds, and anyone else who could satisfy certain tests of financial strength would back bank deposits.

Petri's bill would effectively privatize both deposit insurance and bank regulation, since the federal government's role would be reduced to making certain that a cross-guarantee contract was in place for every bank. Syndicates of private guarantors would decide on the safety and soundness requirements to be imposed on each bank whose deposits they guaranteed, and they would price their services according to the varying levels of risk they chose to undertake. Individual banks could choose from a variety of insurance policies based on price and flexibility. Petri argues that would reduce the possibility of future "credit crunches," since no single insurer would be in a position to dictate what risks were acceptable for all banks across the entire country. But since private investors, unlike the federal government, do not have an effectively limitless supply of money, they have a vested interest in regulating the banks they back.

To avoid disrupting markets during the transition from public to private insurance, the plan would not go into effect until either banks with at least $500 billion in total assets signed on or the expiration of an 18-month period following the passage of the bill, whichever came first. The bill is currently being considered by subcommittees of the Ways and Means, Judiciary, and Banking committees.

"Mispriced federal deposit insurance contributed to a series of asset deflations that caused bank insolvency losses not seen since the Great Depression," says Petri. Until recently, the FDIC failed to use risk-based insurance premiums, argues Petri, enabling banks that were active lenders to "boom" sectors of the economy such as oil and real estate to attract deposits long after warning signs of coming "busts" would have otherwise scared off depositors. Even after the S&L wake-up call, the FDIC has been slow to implement a congressional mandate to do what any non-governmental primary insurer does as a matter of course: privately reinsure its liability to spread its risk.

A market-driven insurance system

would not only protect taxpayers from having to bail out failed banks, says Burt Ely, the Virginia-based banking consultant who helped Petri devise his plan, it would also allow banks to be more responsive to local economies and their needs. As it stands, the nationwide regulatory laxness that precipitated the S&L crisis has merely been replaced with a nationwide regulatory strictness. The result is an excessively tight credit crunch, with bank loans falling 2 percent since 1991, despite increased credit requests. "A market will price riskier loans at higher rates," says Ely. "One-size-fits-all regulation of banks resulted in enormous losses that could have been avoided."

Unlike the FDIC, which must by law apply equal standards across the country, private insurers wouldn't be in a position to dictate what risks were acceptable for all U.S. banks. "The political process doesn't understand the regional nature of bank insolvency losses," notes Petri. "Overall, commercial banking outside of the Southwest and New England actually performed reasonably well during the 1980s. But the regulatory pendulum swung so far in the opposite direction that the [national] economy suffered from a credit crunch."

SINCE A NUMBER OF FOREIGN GOVERNments, such as New Zealand and Argentina, have gotten out of the deposit-insurance business, Petri can buttress his case on Capitol Hill with more than theoretical arguments. Miller, the University of Chicago law professor, notes that Argentina has eliminated its deposit-insurance system and made a commitment not to rescue big banks that fail. While Argentina's depositors are thus completely unprotected by their federal government, its economy is booming, and, says Miller, "the banks are doing fine."

U.S. economic history also lends support to the idea: Private deposit insurance was once a staple of American banking. Before the Civil War, a number of states, including Ohio, Indiana, and Iowa, had insurance programs based on cross-guaranties resembling those in the Petri bill. While bank failures were frequent, depositor losses were minor. Despite their success, however, such plans were pushed out of business by the passage of banking laws that consolidated power in the federal government.

And in the areas of the country that still allow private deposit insurance for deposits greater than the federally insured maximum of $100,000, the results have been promising. For instance, a Massachusetts program currently in effect covered a number of savings-bank failures in the 1980s with no depositor losses. While this sort of private umbrella has worked well, it hasn't had much of a chance to develop, since throughout the 1980s the FDIC usually covered even the uninsured portion of deposits at large banks. This politically savvy but economically ruinous policy was predicated upon fears that a major bank failure would cause disruptions in the nation's banking system. At the same time that the "too-big-to-fail" policy gave big banks an unfair advantage over smaller ones, however, it also reversed the original intent of federal deposit insurance, which was to guarantee *small* depositors against losses.

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Of course, there have been some notable busts among private insurance plans, including some pre-Depression state systems and the high-profile failure of a private credit union in Rhode Island in 1990. A program in Canada recently went belly up as well. But the failures tellingly share a common element with the current federal deposit insurance system: All relied on a centralized authority rather than competition to assess risk.

In Rhode Island, for instance, the state enabled a single private insurer to maintain a monopoly on insurance for all banks and credit unions that didn't have federal insurance. In those states with private insurance prior to the Depression, a central fund assessed premiums on each bank that were computed without regard to losses suffered by particular members. As a result, individual members of the system had no incentive to monitor the activities of their fellow banks.

But if top-down federal regulation will never be able to prop up a banking system that subsidizes bad loans and rewards depositor indifference, why haven't bankers pushed to scrap a system that binds them up with restrictions they universally denounce as burdensome? "I told one of my banking clients that private insurance was the key to the asylum," notes Ely. "He responded by saying, 'What makes you think the inmates want to escape?' " As with most regulated industries, the primary beneficiaries are the suppliers, not the consumers whom the rules ostensibly protect. A world with fiscal winners and losers saddles bankers with much more responsibility and accountability.

A boom-and-bust banking system, of course, was the predictable result of a policy that, however well-intentioned, failed to address economic realities. Even Franklin Roosevelt, a man rarely praised for his fiscal acumen, understood this. In 1933, as he signed into law the bill that created the FDIC, he prophesied that federal deposit insurance would end up subsidizing bad banks at the expense of good ones, costing taxpayers money in the end. Fifty years later, that's an all-too-accurate description of the current banking scene. R

Cornelius Chapman is a Boston-based attorney specializing in banking and privatization matters.

Pilgrim's Regress

By Martin Morse Wooster

President Clinton's future depends on selling big government to a leery electorate.

As President Clinton celebrated his first year in office, some journalists admired his achievements, while others were skeptical. But for many journalists living inside the Beltway, President Clinton was not just a politician—he was a hero.

Journalists call a story a "beat sweetener" if it's meant to please a source or boost the ego of a powerful person. There were far too many writers whipping up sticky feasts of love in 1993, hoping that, if they were very good, Bill Clinton would pat them on the head and Hillary Rodham Clinton would reward them with a homemade cookie. While some writers, such as *The Washingtonian*'s Barbara Matusow, *Newsweek*'s Eleanor Clift, and *Time*'s Margaret Carlson, were content to deliver lollipops to the Clinton camp, *The New Yorker*'s Sidney Blumenthal wanted to deliver the entire candy store to the presidential partners.

Blumenthal was in an odd position. He had made his career as a liberal pit bull who saw conservatives and Perotistas as juicy raw meat. When attacking right-wingers, Blumenthal wouldn't usually stop until the bones were picked clean.

But now the Republicans were out of power, and diminutive billionaire Ross Perot had disappeared from the national political radar. Worse still, Blumenthal's good friend, Bill Clinton, was in the White House—and under attack. The revelations of the Arkansas state troopers had made the president's private parts fodder for comedians, and the smoldering scandal of the Whitewater Development Corporation threatened to burn the president, the First Lady, and several other White House staffers. Something had to be done!

So in the January 24 *New Yorker*, Blumenthal concocted a beat sweetener so sugary it threatened to give the magazine's readers diabetes. In his effort to become Clinton's best friend in the press, Blumenthal pulled out all the stops. He made comparisons between the president and Lyndon Johnson, John Kennedy, Dwight Eisenhower, Harry Truman, and Woodrow Wilson. Showing his mastery of history, Blumenthal wrote that "Clinton had the worst first week of any president since William Henry Harrison, who caught pneumonia while delivering a long inaugural speech and died a month later. Clinton suffered from attorney general nominees with nanny problems and from visceral opposition to gays in the military."

My favorite passage in Blumenthal's article described Bill Clinton's goals. The dilemmas Clinton faces, according to Blumenthal, "must be excruciating, because the issues he insists on confronting are so basic. Yet...he is open to recasting his methods in order to reach his goals. Honor and glory must remain ceremonial. If the glittering superficialities of the office entrance its occupant, he risks distraction from his arduous tasks. This pilgrim has to be a politician: it is the only way he knows how to progress."

In the midst of such high-minded praise, Blumenthal had one substantive point to make. If Clinton is to succeed, Blumenthal wrote, "he must revive belief in positive government. Not for a long time—not since the mid-1960s, really—have Americans been confident that government could help them deal with the significant problems of their lives."

The national lack of faith in "positive government"—more commonly called big government—will be difficult, if not impossible, to overcome. The New Dealers who were active in the Democratic Party during the Carter presidency are by now dead or retired. The Great Society advocates who could still pass themselves off as young Turks in the late 1970s are discredited graybeards now.

But the problem isn't just on the big government side. The Clinton administra-

HENRY PAYNE

tion faces more-sophisticated intellectual opposition than the Carter crew ever did. Free-market think tanks are far larger now than they were in the "national malaise" years. Had Jimmy Carter proposed a national health-insurance scheme, it's unlikely it would have been countered as effectively as Clinton's was by the Manhattan Institute's Elizabeth McCaughey in the February 7 and the February 28 *New Republic*s (it's equally unlikely that *The New Republic* would have run an argument against a Democratic president).

THE LINGERING RESENTMENT OF GOVERNment doesn't, of course, merely exist among think tankers. This dislike for the state is the result of our country's contempt for petty bureaucracy. The regulators who make sure you stand in line for hours to renew your driver's license have done more to undermine support for government than any policy analyst ever has. As the American Enterprise Institute's William Schneider notes in the November 27 *National Journal*, when critics of the Clinton health plan ask, "Do you want health care run like the Post Office?," the charge is effective because postal workers, protected by a state-granted monopoly, have no incentives to be pleasant to their customers.

Liberals have duly noted this sea change in attitude. The cover of the January *Washington Monthly* asserts "Government *Can* Work"—the implication being, of course, that everyone agrees that it is *not* working at the present moment. Inside, Nicholas Lemann notes that when he first came to D.C. in 1976, the notion that government bureaucracies were inefficient and unpleasant was "considered the province of anti-New Dealers and Taftites." Even mainstream Republicans, Lemann writes, thought that bashing big government was "faintly embarrassing—the kind of thing that one doled out for Nebraskans at fundraisers but didn't really mean."

But today, observes Lemann, statements such as "the federal government could really improve public schools" or "government can build safe, decent hous-

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ing for the poor," usually result in a response "like that of Margaret Dumont in a Marx Brothers movie (jaw dropping down in disbelief, eyes whitening in horror)." Lemann unconvincingly faults the press for the new anti-government consensus. If the fourth estate looked at how big bureaucracies worked, he argues, people might approve of them more. At best, this is wishful thinking. Given the sorry state of Clinton's cabinet—a group that looks like America only if the country is populated exclusively by rich lawyers and deal makers—it's hard to see anyone getting excited about, say, reforms in the Department of Housing and Urban Development. And does anyone sleep better at night knowing that Federico Peña—whose primary claim to fame is an over-budget, behind-schedule airport in Denver—is secretary of transportation?

SO IT WON'T BE EASY FOR CLINTON TO RE-store big government's reputation. And making the already herculean task even more difficult is Clinton's status as what Michael Barone, in the January 31 *U.S. News & World Report*, calls a "pre-emptive president." Barone, borrowing from political scientist Stephen Skowrenek, explains that a pre-emptive president is one who "come[s] to office in a party whose positions do not command majority support." Even though the Democrats control both houses of Congress, Clinton was elected with only 43 percent of the popular vote and has had to fight off his own party to pass his budget and NAFTA. Pre-emptive presidents are typically threatened with impeachment (e.g., Andrew Johnson and Richard Nixon) or succeed only in discrediting their parties for a generation (e.g., Grover Cleveland and Woodrow Wilson).

The only successful pre-emptive president, according to Barone, was Dwight Eisenhower—and even he couldn't get a Republican Congress after 1954 or ensure that his vice president would succeed him. What's more, Clinton is noticeably lacking Ike's "steely self-discipline, military renown, and moral authority." Barone predicts that until Clinton comes up with a "compelling narrative" of why the Democrats should run the country, his presidency cannot be truly successful.

FOR ITS PART, THE GOP IS HAVING trouble writing its own narrative, compelling or otherwise. Some older Republicans have called for pushing slightly more market-oriented versions of Clinton's proposals, a 1994 version of what Barry Goldwater used to call the "dime-store New Deal" and what Democrats in the 1960s referred to as "Constructive Republican Alternative Policies" (sometimes just by the acronym).

In the wake of the 1992 elections, most of the disgraced senior advisers to President Bush have dropped out of party politics (it is indeed a pleasure not to know what James Baker, Nicholas Brady—and especially Richard Darman—thought about anything). Even though nationally known figures such as Bob Dole, Jack Kemp, Dick Cheney, and Bill Bennett have hit the airwaves to plug Republican initiatives, no one has emerged as a compelling party leader. As strategist Jeffrey Bell told James A. Barnes in the November 6 *National Journal*, what the Republicans stand for is now "very amorphous. They really don't have a positive economic policy of their own that they are pushing, and their social policy is under review."

What *is* clear, however, is that the Bush presidency, with its return to patrician rule, did very little to help the Republican cause. As Barnes notes, the heady brew of Reaganism enticed voters to switch parties. Roper surveys show that while 47 percent of Americans in 1978 said they were Democrats and 23 percent said they were Republicans, by 1985 only 37 percent of Americans said they were Democrats, while 34 percent said they were Republicans. But the tepid tea of Bushism stopped the trend: Most surveys of party identification since 1985 have shown that more Americans, by a margin of one to four percentage points, still see themselves as Democrats than Republicans.

Exiled from power, the GOP is searching for ideas that can win elections, and the conservative public-policy magazines are eager to give space to right-wingers with ideas. Sen. Malcolm Wallop of Wyoming in the February 7 *National Review* presents "A Conservative Manifesto" and proclaims, "Most Americans sense that our ever-rising taxes are feeding a machine hostile to our values. They ask: 'Who represents *us*? Who's on *our* side?'...Disdain for modern government is wise, patriotic—yes, even lovely." Wallop upbraids his fellow party members for their role in the problem: "Once elected...many Republicans promptly put on their tuxes and became concerned with 'governance.'"

And William Kristol, who was Dan Quayle's chief of staff, is interviewed in the Winter *Policy Review*. Kristol, currently chairman of the new think tank Project for the Republican Future, is confident that health care will be "liberalism's Afghanistan—the overreaching that exposes liberalism's weakness and causes its collapse." Kristol has hired thinkers he hopes will develop ideas as radical as the ones the supply-siders cooked up during the last Republican exile.

Certainly, intellectual debate is far more productive than the traditional Republican practice of doing nothing, smiling, and hoping for a Democratic blunder. But as the Republicans hammer out a new political platform, they should understand that Bill Clinton is neither a hero nor a fool; though he beat the weakest presidential incumbent since Herbert Hoover, he is in fact a very skilled politician who could do well against tougher opponents. While there's an outside chance that the Democrats can restore the coalition that sent Roosevelt, Truman, Kennedy, and Johnson to the White House, it's more likely that Bill Clinton will be very vulnerable in 1996. The real question, come re-election time, may be whether the Republicans have written a narrative compelling enough to recapture the White House. ®

Contributing Editor Martin Morse Wooster is a visiting fellow at the Capital Research Center.

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Permission to Speak Freely?

By Michael McMenamin

Democracy and the Problem of Free Speech, by Cass Sunstein, New York: The Free Press, 300 pages, $22.95

There's No Such Thing As Free Speech...and It's a Good Thing, Too, by Stanley Fish, New York: Oxford University Press, 332 pages, $25.00

SOMETIMES YOU *CAN* TELL A BOOK BY its cover. So it is with the latest efforts from Cass Sunstein, a professor of law and political science at the University of Chicago, and Stanley Fish, an English professor and Milton scholar at Duke University who also teaches at Duke's law school. The titles of their books tell you most of what you need to know: Both are enemies of free speech as it is currently understood.

Fish is an academic who drives a Jaguar, disdaining what he terms the "ugly" Volvos and Saabs of his fellow professors; expects to be recognized by waitresses as "Stanley Fish, the guy who believes words mean anything you want them to mean"; never revises his first drafts; and candidly admits that his "forward time span is generally two hours. By that, I mean I tend not to think or worry about anything more in the future than two hours hence." Much of what Fish writes is not worth remembering that long anyway. One doubts he will have much impact on the future of free speech, except through those unlucky Duke students who happen upon his (elective, I hope) courses at the law school.

There is an ugly undercurrent to Fish's book, akin to intellectual McCarthyism. At one point, he attacks Nat Hentoff of *The Village Voice*, who writes frequently on the First Amendment. One of the most prominent civil libertarians in the country, Hentoff supports free speech and a free press even when they offend his own left-wing sympathies. So Fish calls Hentoff a "mouthpiece" for a "neo-conservative political agenda which is backed by huge amounts of right-wing foundation money provided by William Simon and others." Can't you just picture Bill Simon avidly reading *The Village Voice*? Elsewhere, Fish accuses Hentoff and others of "bringing a message a bypassed generation of academics wanted to hear: we will help you reclaim your legacy...we will put an end to the politics of race and sex on campus; we will put those women and blacks and gays in their proper places, at your feet."

I believe the precise intellectual term for all this is *bullshit*. It is, in a sense, a pathetic spectacle: an aging English professor driving a Jaguar to compensate for who knows what deficiencies and making ad-hominem attacks on free-speech supporters because, in the end, he really has nothing to say on the subject. Fortunately for Fish, Hentoff doesn't believe in defamation suits. The truth is, on the subject of civil liberties, Stanley Fish doesn't belong in the same sentence as Nat Hentoff.

Cass Sunstein is another matter. A well-known and widely respected constitutional law scholar, he writes clearly, probably doesn't publish his first drafts, and refrains from ad-hominem attacks. But like Fish, he labels his First Amendment opponents "absolutists" and tries to discredit them by arguing that the First Amendment doesn't mean what it says. For Sunstein, a telling point is that the First Amendment doesn't protect such "speech" as "price-fixing, contract making, firing someone for racial reasons, [or] placing bets on horses." Because the First Amendment does not protect all "speech" (or what Sunstein tries to pass off as "speech"), the "absolutists" are only at different points on the same slippery slope as the "regulators." They simply disagree as to how far down the slope government should go in regulating the press and suppressing speech.

AND MAKE NO MISTAKE, GREATER GOVernment regulation of the press and more government suppression of speech are at the core of what Sunstein eloquently advocates in his book. Fish offers no similar solutions, content to attack the straw man of free-speech absolutism. Sunstein has been critical of Fish's halfway approach. In a recent review of *There's No Such Thing As Free Speech...and It's a Good Thing, Too* for *The New Republic*, Sunstein writes that "the failure of free speech absolutism does *not* mean that there is no such thing as free speech...instead we need to develop principles by which we run a good system of free expression. The whole question, a central one in contemporary democracies, is how to proceed when some distinctions are inevitable. About this question, Fish has little to say."

It's a good thing, too, because Sunstein has more than enough to say. Having the government rather than individuals "run a good system of free expression" is about as far away as you can get from the plain language of the First Amendment without repealing it altogether. If ever adopted by the legislative or executive branch and upheld by the courts, Sunstein's views would do considerable damage to individual liberty. But preserving individual liberty against the encroachment of government does not appear to be one of Sunstein's main concerns.

Sunstein bases his approach to regulating speech and the press on what he terms a "Madisonian conception of free speech." Madison, he says, placed a "high premium...on political (not economic) equality and on the deliberative functions of politics. He understood the free speech principle of the American Constitution, for which he above all was responsible, in the light of these commitments. It, therefore, seems reasonable to describe the Madisonian conception as one that associates free speech with his distinctive un-

derstanding of politics." But as with *absolutist*, Sunstein uses *Madisonian* as a handy label, rather than an accurate historical reference. He writes, "I do not mean to say that all of the arguments in this book are directly connected with the views and aspirations of James Madison."

Fair warning, but it's the only one. Sunstein doesn't tell you that in a 1986 *California Law Review* article what he now calls the "Madisonian conception of free speech" was "the Jeffersonian model of free expression." In that piece, he specifically distinguished Jefferson's views ("the purpose of free expression is to insure to the extent possible that the citizenry will make informed decisions on public issues") from those of "Madison and other prominent writers at the time of the framing who argued for deliberation by representatives rather than by the citizenry as a whole."

It would have been interesting to see Sunstein's explanation for this change from Jefferson to Madison. That he didn't even disclose the shift lends support to the conclusion that he is using *Madisonian* as a label of convenience rather than principle. I suspect he ditched Jefferson because calling for greater government regulation of the press and more government suppression of speech was something few people would accept as a Jeffersonian principle. It would have been awkward to explain Jefferson's 1787 letter in which he declared: "This basis of our government being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter." (Sunstein might hesitate, but there's little doubt that he would choose government, and then rationalize the choice by arguing that a wise government could do a better job of publishing newspapers anyway.)

Madisonian has a nice ring to it, and Madison did draft the First Amendment. Moreover, his views are less well-known than Jefferson's, and Sunstein doesn't go out of his way to illuminate those beliefs of Madison which do not fit his thesis. For example, you find in Lucas Powe's book *The Fourth Estate and the Constitution: Freedom of the Press in America* (see "Fencing in the Fourth Estate," December 1991), but not in Sunstein's, that Madison's first draft of the First Amendment read: "The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable." Neither does Sunstein mention that, elsewhere, Madison had written that the press was "completely exempted from all authority

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whatever of the United States" by virtue of the First Amendment.

The press as a "bulwark of liberty" is not a concept Sunstein appears to be comfortable with. Instead, he ignores Madison's "complete exemption" of the press from regulation and harks back to the 1930s and proposes a "New Deal" that would do for a free press and the First Amendment what Roosevelt's New Deal did for free markets and the right of contract. Sunstein has a gauzy, romantic view of the New Deal and treats its ad-hoc experiments as if they were based on philosophical principles rather than short-term expediency. He relies on the now discredited view that the depression of the '30s was caused by a failure of laissez-faire economics; ignores the roles of protectionism, tax increases, and government restriction of the money supply in prolonging the depression; and fails to mention that it took a world war to rescue the economy from the New Deal.

Law professors like to use contrasting models in describing their preferred approach to the First Amendment. In *The Fourth Estate and the Constitution*, Powe contrasts the "Right to Know" model with the "Fourth Estate" model. The Fourth Estate model was articulated by the U.S. Supreme Court in its 1966 decision *Mills v. Alabama*: "The press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means of keeping officials elected by the people responsible to all the people whom they were selected to serve." Powe argues that the Fourth Estate model is more protective of individual liberty and a free press, while the Right to Know model can, in the wrong hands, be used to diminish freedom of the press—for example, by regulating and dictating what is published so the public can be "better informed."

Sunstein conspicuously avoids using the phrase *free press* in his book, despite the First Amendment's specific admonition that "Congress shall make no law abridging the freedom of speech, or of the press." Instead, he uses the phrase *free speech* to mean either the speech of individuals or the behavior of the press. Sunstein contrasts his New Deal/Madisonian model of "deliberative democracy" (which is similar to Powe's Right to Know model) with the "marketplace of ideas" model articulated by many people over the centuries, including John Milton, John Stuart Mill, and Oliver Wendell Holmes. Sunstein argues that the marketplace of ideas has failed because more people watch *Inside Edition* and *Hard Copy* than the *MacNeil/Lehrer NewsHour*. His solution is to "regulate the marketplace in the interest of promoting attention to issues and diversity of view." He concedes: "It would be tempting to think that my arguments amount to a broad and perhaps bizarre plea for 'more regulation' of speech."

The press as a "bulwark of liberty" is not a concept the author is comfortable with. He harks back to the 1930s and proposes a "New Deal" that would do for a free press and the First Amendment what Roosevelt's New Deal did for free markets and the right of contract.

It is not only tempting, it is well-nigh inescapable, especially when you consider that Sunstein's pole star is the Supreme Court's 1969 decision in *Red Lion Broadcasting*. That ruling upheld the so-called Fairness Doctrine, which says government should compel broadcasters to air, free of charge, "opposing viewpoints." The Court declared: "It is the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences which is crucial here."

Red Lion is widely criticized by constitutional scholars, few of whom believe it would be upheld today, even with the anti-media bias of the Rehnquist Court. Among other faults, it was explicitly based on the alleged technological scarcity of broadcast frequencies contained in the "radio spectrum," an argument that even Sunstein concedes is no longer valid (if it ever was). Nevertheless, *Red Lion* offers a vision of the First Amendment that Sunstein admires.

While Sunstein focuses more on television because it reaches so many people, he believes the print media are also fair game for overt government regulation along *Red Lion* lines: "This argument applies most conspicuously to broadcasters, since the government has such an obvious role in allocating their licenses. But the argument has force for newspapers too. The property rights of newspapers also come from a legally conferred power to exclude others. *The New York Times* is given the legal power to exclude people who want to write for it. Simply as a matter of fact, that power is a creation of the state. It is a function of the law of property. If I want to write for *The New York Times*, and if I am stopped from doing so, it is in significant part because the *Times* is able to invoke the law of trespass to back up its exclusionary decision. Without the law of trespass, we would be in the state of nature, and we cannot purport to know what would be published in that strange and obscure place....If all this is right, some of the core commitments of current First Amendment law come under severe strain."

They sure do. Taking Sunstein's views to their logical conclusion, if *The New York Times* doesn't print what the government or some favored group wants (all in the name of fostering a "deliberative democracy," of course), then the government may well stand aside and not enforce any of the newspaper's property rights when a group of thugs confiscates whole editions of the *Times* with which it disagrees. It can't happen here? It already has. The University of Pennsylvania—un-

der the stewardship of Sheldon Hackney, Bill Clinton's friend and the new head of the National Endowment for the Humanities—stood aside when issues of *The Daily Pennsylvanian* were confiscated by irate black students and did nothing except reprimand the security guards who apprehended them. The City of New York took a similar position during the *Daily News* strike, when union members violently interfered with delivery trucks.

Sunstein's reasoning suggests a government protection racket aimed at inducing newspapers to accept such "mild forms of regulation" as "government imposition of a right of reply; a system designed to diminish the power of advertisers over the content of newspapers;...a tax on advertising proceeds; and government subsidies, on a viewpoint-neutral basis, to newspapers that agree to cover substantive issues in a serious way." Sunstein limply attempts to appease the press by allowing that the "print media are substantively better" than the broadcast media in covering public affairs, in that "many newspapers do provide a kind of detail, depth, and substance that are lacking in the broadcast media." But he goes on to add, in case print journalists think he is going to let them off the hook, that "there can be no doubt, too, that the work of the print media might be substantially improved."

There is a word that aptly describes Sunstein's approach to free speech and a free press. It isn't *Madisonian.* Try, instead, *Nixonian.* As Powe notes in *The Fourth Estate and the Constitution,* in 1974 Richard Nixon "warmly supported" a federal reply law applicable to broadcast and print media alike because "it would both 'enhance' debate and encourage 'good and decent people' to run for office without fear of scurrilous attacks."

Better yet, why not just ban those scurrilous attacks, since they do nothing to enhance the Nixonian model of deliberative democracy? Sunstein probably wouldn't go that far down the slippery slope, but, armed with his arguments, someone will. Count on it. ®

Contributing Editor Michael McMenamin is a lawyer in Cleveland who represents broadcast and print media.

Not-So-Popular Science

By Lee Dembart

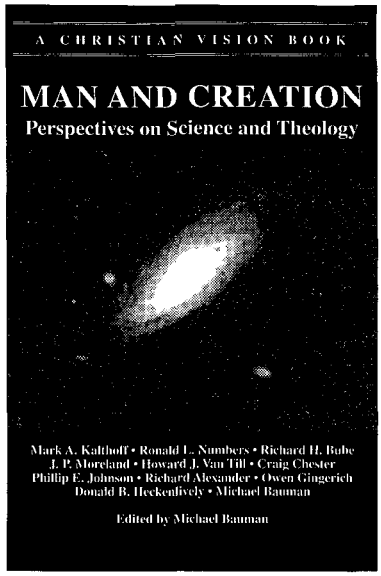
Uncommon Sense: The Heretical Nature of Science, by Alan Cromer, New York: Oxford University Press, 240 pages, $23.00

DO WE DISCOVER THE WORLD, OR DO we invent it?

Or, put another way, is there a difference between Newton and Shakespeare? We think that if Shakespeare had never lived, no one else would have written *Hamlet.* But if Newton had never lived, the law of gravity would still apply.

These seemingly simple questions touch the core of a fundamental and ongoing fight over the very nature of truth that is being slugged out in universities, think tanks, and political arenas around the globe. This debate pits modernists against postmodernists. In this context, modernity refers to the idea, often associated with the likes of Francis Bacon, René Descartes, and Isaac Newton, that reason and systematic observation should be preferred over tradition and dogmatic authority.

As children of the Enlightenment's drive for scientific knowledge and analysis, modernists claim that we *discover* the world. It is out there, separate from us and independent of our minds and wishes. Using our intelligence, we can learn about the world, but we are essentially passive observers of it. The laws of physics are external and objective, universal and so-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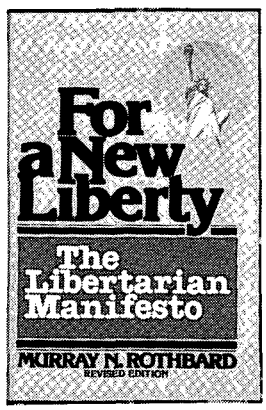

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cially neutral, true at all times and all places. In this "scientific" world view, the truth of a statement rests on its correspondence with observable evidence and its ability to predict future results. Truth is public.

But postmodernists, who rule much of the academy and many of today's political movements, believe in "the social construction of reality," meaning that all knowledge—even physics—is a cultural phenomenon, inextricable from human biases and desires. This view dismisses the very idea of objectivity and argues not just that we can never know what objective reality is but that no such thing exists. Some feminist scholars, for example, contend that objectivity, rationality, and the scientific method are constructs that validate self-serving ideas of hierarchy and dominance by which mostly male scientists distance themselves from nature in an attempt to dominate and exploit it. In the postmodernist world view, truth is private and local, and there are fundamentally different truths perceived by blacks, by women, by gays and lesbians, and by other oppressed minorities. The standard of truth is not external but internal, and the central question is not "What is out there?" but "Who is speaking?"

Alan Cromer, a physicist at Northeastern University, jumps into this brawl with an impassioned, heavyweight defense of science and objectivity. He also provides an explanation for why so many people throughout history have failed to join the modernist camp. In *Uncommon Sense*, Cromer argues that people are naturally subjective, that they do not easily distinguish their wishes from the world, that abstract, analytical thinking is hard to come by, and that, as a result, the development of science was not inevitable. Far from it: Of all civilizations—including those, such as China, that made impressive technological advances—only the ancient Greeks developed science.

Discovery or Invention? Some feminist scholars contend that objectivity, rationality, and the scientific method are constructs that validate self-serving ideas of hierarchy and dominance by which mostly male scientists distance themselves from nature. In the postmodernist world view, truth is private and local.

THE GREATEST ACHIEVEMENT OF THE Greeks, Cromer argues, was the idea of objectivity—the idea that the world is rational and consistent, that it can be understood by reason, that not all statements are equally valid, and that the better argument wins. The Greeks, he says, "didn't invent just new subjects for thought, but fundamentally new ways of thinking."

Cromer demonstrates that throughout all of recorded history, the idea of objectivity and public knowledge has been a minority view. He contrasts ancient Greece with ancient Israel, Homer with the Bible. "Homer is the world's first exemplar of objective thinking," says Cromer. "In the *Iliad*, the assembly, in which men of different rank debate matters of mutual concern, is a hallowed institutional, and skill in debate is held as high as skill in war."

In contrast, the Bible is filled with "self-appointed prophets [who] claim personal knowledge of God's will, which they exhort the people to obey. The claim is never questioned, even rhetorically. Such claims of personal knowledge are very much with us today, from papal encyclicals to television evangelicals." They are also with us in the feminist refrain that "men just don't get it," which is similarly a claim about private knowledge, immediately available to some but inaccessible to others.

Religious thought, closely akin to belief in magic, is fundamentally at odds with reason and objectivity. Galileo and Darwin ran into so much trouble with religionists not just because their statements disagreed with church teaching. More importantly, they appealed to reason and observation rather than dogma. As Cromer notes, "Judaism, Christianity, and Islam are monotheistic religions based on the teachings of prophets. They share the belief that some human beings can directly know the mind of God, but they disagree on which of them are the true prophets and which are the false ones.... Scientific thinking didn't—and couldn't — evolve from the prophetic tradition of Judaism and Christianity." Despite the many hoops that some religionists try to jump through to bring the two together, religion and science cannot be reconciled. They are radically different ways of knowing the world.

Cromer argues that the religionists—broadly defined—always outnumber the scientists. That is why science and objectivity are "heretical" ideas. People want to believe that truth can be obtained by personal insight, intuition, and belief. Science, on the other hand, he says, is "a sort of growing up, a putting aside of childish egocentrism." We have great trouble doing it as individuals and as cultures. Abstract thinking does not come naturally to most people. Reason, he says, is "an oasis in the midst of a vast desert of human confusion and irrationality." Hence his title, *Uncommon Sense*.

Cromer's faith in the scientific enterprise is virtually absolute and unshakable. He disagrees with Thomas Kuhn's description of scientific progress as a series of "paradigm shifts" by which a new system of ideas and explanations replaces an old system, which is then itself discarded. Not so, Cromer says: "Science is over-

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whelmingly cumulative, not revolutionary, in its structure." Very little of what has been established by scientific investigation is thrown away. Rather, old theories become incorporated into new theories that are more inclusive and have greater explanatory power. Thus, Einstein's physics did not *replace* Newton's mechanics. Rather, the Newtonian world was shown to be a special case of the Einsteinian world. Newton's laws of motion still perfectly describe systems where velocities are slow. And they are still taught to physics students, not as a historical oddity but as the laws that apply to the macro-level world we know.

Because the religionists always outnumber the scientists, the author argues, science and objectivity are "heretical" ideas. People want to believe truth can be obtained by intuition and belief. Science, on the other hand, is "a sort of growing up, a putting aside of childish egocentrism."

Uncommon Sense is a masterful, coherent, well-thought and well-written statement of the scientific world view and argument on its behalf. In the last chapter of the book, Cromer even proposes a wholesale revision of our educational system aimed at teaching young people to think rationally, scientifically, and objectively. He exemplifies the very commitment to rationality that he extols. He marshals facts, he explains, and he is very persuasive.

But, of course, I already agree with him. I also doubt that anyone who doesn't already agree with him will be persuaded. Science, alas, *is* different from the social realm. We certainly can hold up Euclid's geometry as the model for all knowledge: Start with premises about which no one can disagree, and then, using logic alone, prove theorems that are as certain as anything we know. Unfortunately, only geometry is like geometry.

Can anyone recall a political debate in which anyone's mind was changed by facts or by arguments? Think of *Nightline*, or *MacNeil/Lehrer*, or *Crossfire*, or *Firing Line*. When is the last time that any of the guests on those programs—or any other—said to an opponent, "You know, I never thought of it that way. You're right, and I'm wrong"? As Cromer concedes, it is easier to believe in private truths than in public truths, more pleasant to believe in the social construction of reality than in an objective and indifferent world, and more delightful to believe in magic than in science.

Democracy is based on the notion that the better argument wins and that through public debate the truth will out. But almost without exception, people define the better argument as the one that they agree with. And, as we know, the truth lies at the bottom of a very deep hole. People are rarely dissuaded from the private-truth tradition by rational argument. Cromer has no doubt (and I share his conviction) that objectivity and scientific thinking are more than just one more way of looking at the world. He is certain that his model of reality is fundamentally and essentially true.

But then again, that's what all religions say. Ironically, there is no knockout punch with which Cromer can end his argument. You can hear those who disagree with him already lining up. Their first argument will be, "Well, he's a white male scientist, so what do you expect him to say?" That is what passes for argument in the postmodern world. ®

Lee Dembart, a former editorial writer at the Los Angeles Times *and editorial-page editor at the* San Francisco Examiner, *teaches journalism and mass communications at the University of California, Berkeley.*

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Totalitarian Recall

By Nick Gillespie

Seeds of the Sixties, by Andrew Jamison and Ron Eyerman, Berkeley, Calif.: University of California Press, 235 pages, $25.00

Ron Eyerman and Andrew Jamison: They challenge the "great myth" that the '60s were unique but fail to engage where and why things went wrong.

IT DOESN'T TAKE A BABY BOOMER IN THE White House to know which way the wind blows. But it sure helps. While Bill Clinton may not be Abbie Hoffman or Jerry Rubin, having a faux student radical (he *almost* smoked pot, he *almost* dodged the draft) as president drives home the fact that the "1960s" are now our central cultural, social, and political reference point. Forget those musty old issues—the Spanish Civil War, the New Deal, the Cold War—that once demanded a response from all "concerned" and "engaged" citizens. It is more relevant now whether you "grokked" Spock, dug Phil Ochs records, or "fucked the system" every chance you got.

Although this referential shift from one generation to the next is a natural progression, this time around it is more ironic than usual: After all, the generation that came to power following World War II didn't spend its youth warning that "you can't trust anyone over 30." Irony notwithstanding, the stakes in defining the activities loosely referred to as the "counterculture," the "movement," and the "New Left" remain very high. If they are seen as part of a righteous revolution, the current power elite will try to recapture them in law and spirit; if they are viewed as a series of cultural catastrophes, their legacy will be spurned.

So far, the various countercultural movements of the '60s have been portrayed in movies, TV shows, and books mostly as noble, liberating struggles of pure-hearted, peace-loving longhairs against small-minded, selfish squares—a serious version of *Rowan & Martin's Laugh In*. As urban-guerilla-cum-establishment-pol Tom Hayden wrote in his 1988 memoir, *Reunion*, "Like the American revolutionary period, the awakening of the early sixties was a unique ingathering of young people....The gods of our parents had failed or become idols....When we first used the term *revolution*, it was not about overthrowing power but about overcoming hypocrisy."

This self-congratulatory scenario glosses over a much more complicated—and interesting—reality. However they might have started, the counterculture's '60s ended on a sour note, as "All You Need Is Love" segued into "Gimme Shelter." Martin Luther King's integrationist plea of non-violent resistance was discarded, even before his death, in favor of the armed insurrection of the Black Panthers; the "child of man" conceived at Woodstock was delivered stillborn at Altamont four months later; Students for a Democratic Society transmogrified into the bomb-throwing Weather Underground; the anti-draft movement turned virulently anti-American and uncritically embraced North Vietnam as a model society; in a past-as-prologue moment, Charles Manson was hailed as a pop-culture icon for offing rich "pigs."

These are some of the demons haunting the ruin of the counterculture's love shack. Although former New Left players such as Hayden have made peace with their pasts, other participants cannot exorcise the ghosts so easily. David Horowitz and Peter Collier, former editors of the radical-chic journal *Ramparts* and current editors of the anti-P.C. tabloid *Heterodoxy*, have disowned the '60s as "the decade that would not die, the decade whose long half-life continues to contaminate our own."

Other ex-activists are formulating less strident but no less critical responses to their "movement" activities. In the introduction to *Rads*, his 1992 book about the 1970 bombing of the University of Wisconsin's Army Math Research Center (the "Hiroshima of the New Left"), Tom Bates writes, "The political utopianism, drug experimentation, and sexual license that I and my contemporaries had innocently associated with liberation looked completely different to me now ...in full knowledge of the consequences. ...[T]he radical rhetoric that had fallen so easily from my own lips now seemed dangerously puerile."

SEEDS OF THE SIXTIES, BY ANDREW Jamison and Ron Eyerman, enters this debate from an oblique but promising angle by focusing attention on the New Left's intellectual forebears in post-World War II America. The authors, American scholars at Sweden's Lund University, contend that the "social creativity and experimentation" of the '60s can be best understood by analyzing "dissident intellectuals" of the '40s and '50s.

But even though the authors challenge the "great myth" of "historical uniqueness" perpetrated by student activists in

GABRIELLA SCHULZ

the '60s, *Seeds of the Sixties* fails to engage where and why things went wrong, opting instead for a relatively uncomplicated, feel-good nostalgia in the guise of creating a "usable past." Instead of a thinking man's "Won't Get Fooled Again," we are treated to an intellectual's remix of "Those Were the Days."

The bulk of the book is devoted to case studies of post-World War II social critics who had some kind of enduring impact on the New Left. Chapters are arranged around particular themes and particular people: "Mass Society and Its Critics" (C. Wright Mills, Hannah Arendt, Erich Fromm), "The Ecological Intellectuals" (Fairfield Osborn, Lewis Mumford, Rachel Carson), "Shaping New Kinds of Knowledge" (Leo Szilard, Herbert Marcuse, Margaret Mead), "The Reconceptualization of Culture" (Allen Ginsberg, James Baldwin, Mary McCarthy), and "Making Politics Personal" (Saul Alinsky, Dorothy Day, Martin Luther King Jr.).

The book is at its best when bringing to light the more obscure figures, such as community organizer Alinsky, *Catholic Worker* founder Day, early ecologist Osborn, and atomic-scientist-cum-peacenik Szilard. The discussion of better-known personalities makes for less interesting reading, in some cases because Jamison and Eyerman's approach adds little to previous discussions and in others because the authors fail to nail down a figure's relation to the counterculture.

Jamison and Eyerman are right, for instance, to suggest that author James Baldwin "contributed to the development of an explicit black way of seeing" and that he "inspire[d] the more committed popular authors that emerged in the 1960s." But it may be more precise to say that Baldwin functioned, especially for black radicals, as a negative example, as the embodiment of a cultural Uncle Tom. While Jamison and Eyerman recount part of Black Panther Eldridge Cleaver's scathing dismissal of Baldwin, they fail to note that Cleaver, speaking for many radicals, rejected Baldwin in favor of other, already available cultural role models, es-

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pecially Richard Wright: "[Baldwin's] hatred for blacks, even as he pleads what he conceives as their cause, makes him the apotheosis of the dilemma in the ethos of the black bourgeoisie who have completely rejected their African heritage," Cleaver wrote in *Soul on Ice*. This is influence of a sort, but not the kind Jamison and Eyerman mean.

Given the authors' goal of "reinventing partisanship," though, it's not really surprising that *Seeds of the Sixties* treats its subjects in the least problematic, most charitable fashion possible. In an effort to present a united front against the baneful "ascendancy of market liberalism," Jamison and Eyerman want to downplay dissent among the dissenters. And although they explicitly eschew dogmatism, Jamison and Eyerman try to suppress any heresy that might challenge their articles of faith.

For instance, it matters less to them that Margaret Mead was intellectually dishonest than that she used the cover of ostensibly disinterested research to further a progressive political agenda. Similarly, C. Wright Mills's enthusiasm for Castro and Herbert Marcuse's for the Black Panthers "can perhaps be considered transgressions. But even then, the ideological commitment was temporary and qualified, born more from overexuberance and desperation than from anything else."

WHAT IS PARTICULARLY FRUSTRATING about Jamison and Eyerman's approach is that it suggests but does not pursue a potentially fascinating reevaluation of the '60s, one that links the left and right wings in new and disturbing ways. For example, in discussing Mary McCarthy's opposition to the Vietnam War, the authors note, "It was not only the Westernization of Vietnam that shocked Mary McCarthy but also the language that made this possible. For her, Americans were able to act with such cultural and physical brutality toward the Vietnamese people because of the language they had constructed to filter out what they inflicted."

The New Left, of course, similarly abused language, as when the Rev. William Sloane Coffin declared that "the social justice that's been achieved in ...North Vietnam [is] an achievement no Christian society on that scale has ever achieved." Pentagon war hawks had no monopoly on doublespeak, as countless victims of "cultural revolutions," "reeducation camps," and "agrarian land reforms" could testify. But since *Seeds of the Sixties* is written in the service of socialist partisanship, such telling continuities between radicals and reactionaries must go unremarked upon.

Not interested in examining either the conclusions or presuppositions of their intellectual gurus, the authors replicate the worst tendencies of the New Left in the waning days of the '60s by drawing a cartoon version of reality. They argue solely by repetition that 1950s America was "the age of affluence and conformity."

Insofar as Jamison and Eyerman are not interested in examining either the conclusions or presuppositions of their intellectual gurus, they replicate the worst tendencies of the New Left in the waning days of the '60s by drawing a cartoon version of reality. They argue solely by repetition that 1950s America was "quiescent" and "authoritarian"; it was "the age of affluence and conformity, when so many Americans had become fat and contented." Perhaps realizing that the *Seeds of the Sixties* in fact documents open dissent during a supposedly "repressive" time, they grudgingly admit that "the hegemonic culture opened spaces within which critics could operate."

More tellingly, though, Jamison and Eyerman readily embrace the notion of the United States as a totalitarian regime on a level with Nazi Germany and fascist Italy (the Soviet Union, of course, is conspicuously absent). In discussing postwar America, they note, "It was the [uniformity, consensus, and order] of both the society and the thought that seemed most typical but also, for some of those who had seen *other* totalitarian regimes close up in the 1930s, most oppressive" (emphasis added).

Ironically, the idea of America—or more accurately, *Amerika*—as gulag resulted from the uncritical application of both Marxism and later European social theories formulated in the face of actual totalitarianism. Jamison and Eyerman correctly locate part of its origins in the writings of figures such as C. Wright Mills, Hannah Arendt, Erich Fromm, and Herbert Marcuse. But even as they note in passing Arendt's admission that it was wrong to interpret American society through the prism of Nazi Germany, they fail to consider its larger implication that imported "radical ideas" needed to be rethought in an American context.

To do so, after all, would invalidate the need for the wholesale revolution that the New Left sought to effect and for which Jamison and Eyerman express lingering affection. This methodological hubris, which simultaneously sanctioned the most extreme violence while failing to accurately described a common, lived reality, was the fatal flaw of the counterculture. By refusing to take into account the inclusive political, cultural, and economic structures in American society (and noticeably absent in countries such as Germany, Italy, and the Soviet Union), the New Left purchased a supreme theoretical consistency by trading in the ability to actually account for the world it sought to change. ®

Nick Gillespie is assistant editor of REASON.

Animal Scam: The Beastly Abuse of Human Rights, by Kathleen Marquardt, with Herbert M. Levine and Mark LaRochelle, Washington, D.C.: Regnery Gateway, 181 pages, $24.00

"Your brain and your wife's brain will be drilled and burned like you are doing to our lovely animals." In 1990 animal-rights activists mailed this message to Walter Salinger, head of the psychology department at the University of North Carolina. While the Salingers were not harmed, *Animal Scam* cites other such threats and actual instances of violence committed by animal-rights extremists.

Author Kathleen Marquardt is founder of Putting People First, an advocacy group that defends biomedical researchers, pet owners, hunters, and others against animal-rights zealots. The book describes U.S. and Canadian cases in which "animal rightists" (Marquardt's term) have committed arson, burglarized laboratories, and threatened violence against scientists who use animals in their research.

Marquardt reveals inconsistencies: For instance, animal-rights advocates consider humans who eat animal products evil, but they act as if animals don't dine on one another. She also digs up some outlandish quotes from well-known animal-rights supporters. "I think [biomedical researchers] should experiment on murderers," opined singer Doris Day. "What the hell are they going to do for society to pay us back?"

Unfortunately, a litany of horror stories and goofy quotes doesn't constitute an argument against animal rights. Marquardt saves her exposition of animal-rights ideology for the end. Breezing right past the philosophical issues undermines the book's appeal to an important audience: people who are sympathetic to animal welfare but are unwilling to sacrifice medical research or the Kentucky Derby merely to satisfy a few fanatics. (For a more substantive discussion, see "Liberation Zoology," June 1990.)

Animal Scam awkwardly grafts animal rights onto the larger environmental movement. Marquardt lumps animal rights groups together with such radical environmentalist organizations as Earth First!, Jeremy Rifkin's Beyond Beef Coalition, and Greenpeace. These organizations do share a Luddite hatred of technology, and Marquardt's discussion of the anti-science underpinnings of animal rights is on the money. But Rifkin does not routinely spike trees or destroy property to get out his message. And pet ownership isn't a big problem for the members of Earth First! Marquardt never makes these distinctions.

Her attacks on animal rights often consist of no more than unexamined assertions: Hunting is good, vegetarians don't eat healthy diets, circuses provide wonderful entertainment, and so on. You get the impression that the readers for whom Marquardt is writing eat steak three times a week, bag a couple of deer before breakfast, and catch the rodeo on weekends. There's nothing wrong with any of these activities. But *Animal Scam* implies that you're woolly-headed unless you do the same.

Marquardt relies heavily on secondary sources. That's too bad, because she's a prominent warrior against animal-rights extremism. Aside from a description of a successful legal defense her organization mounted for an animal trainer, the book contains few stories of her encounters with animal-rights supporters. These would certainly be more compelling than examples from other people's articles.

And because Marquardt apparently didn't interview Ingrid Newkirk of People for the Ethical Treatment of Animals, the Humane Society's John McArdle, or any editors of animal-rights publications, the reader never discovers how these crusaders respond to a direct challenge. Perhaps no animal rightists would talk to Marquardt, but she does not mention any attempts to reach them.

If you want a laundry list of animal-rights abuses, you'll find it in *Animal Scam*. A systematic yet accessible assault on the animal-rights movement has not yet been published.

—Rick Henderson

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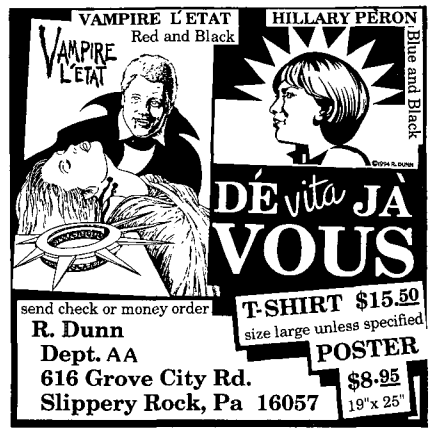

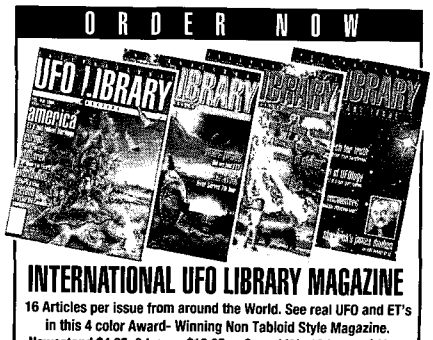
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The Wrath of Farrakhan

By Thomas W. Hazlett

The minister's faux pas

THE REV. LOUIS FARRAKHAN recently moderated his rhetoric as he attempted to sneak into the mainstream. For a while it worked. Major civil-rights organizations included him in their meetings, and he attracted favorable coverage. But then—oops!

Time quoted Farrakhan explaining the political economy of Jewish merchants in the black community, 1920–1960, as follows: "What is a bloodsucker? When they land on your skin, they suck the life from you to sustain their life....So if they made profit from us, then from our life they drew life and came to strength. Then they turned it over to the Arabs, the Koreans, and others, who are there now...sucking the lifeblood out of our own community."

Farrakhan's public-relations rehab program hit a snag. He is being condemned again, and the scramble to disassociate is more frantic than when Rush Limbaugh pops up at a NOW cocktail party. But there are multiple ironies in the stampede to quarantine Farrakhan's racism.

Farrakhan's basic offense is that in each of his endeavors, including his impressive efforts to shape up troubled black youth, he operates as a "racialist" (Leon Wieseltier's term). Jews are an issue today because of what Jewish slave owners are reported to have done in the 1800s and what Jewish shopkeepers allegedly charged in the 1950s. Blacks are important today because their ancestors formed the first great civilization(s). Whites are contemptible as a class because their race has historically oppressed others of color. Even if Farrakhan's fantastic assertions were correct, his methodology would stink. Race is not an interesting rubric under which to lump individuals when crafting a political ethic, particularly for those of us who are less than 200 years old.

But Farrakhan's crude analytical model shares much with pontification across the dial. Take Bill Clinton's rationale for raising taxes in the 1993 budget deal: The government was simply going after those super-rich who made out like bandits in the '80s. While the increase was retroactive to January 1, 1993, Clinton's cover story was retroactive a *decade*. Those who scammed the system in the '80s probably will be hurt very little by the tax increase (and, at any rate, far less than by the special prosecutor looking into Whitewatergate).

Likewise, the right. What is so ugly about some Christian fundamentalists is not that they enjoy whooping it up in tongues or that they observe superstitions last respectable in the paleolithic era. Indeed, our fascination with primitive cultures in foreign lands often appreciates and admires the virtues of belief, piety, and innocence. What is so annoying about the fundamentalists is their bitter determination to libel all who differ, to condemn irregular sizes as guilty of sin. We are mightily offended when they do not consider the worthiness of our souls on a case-by-case basis but instead lump all Others in with the devil.

A similar tendency can be observed on the left. Michael Lerner, editor of *Tikkun*, a Jewish monthly emphasizing the "politics of meaning," says he is not so concerned about Farrakhan's venom as long as whites condemn welfare policy. The latter is an immoral act of greed and malice, Lerner teaches. Yet Farrakhan is himself a critic of welfare policy, which he alertly characterizes as a "subsidizing single women to have babies." Perhaps this act of political immorality will finally lead Lerner to roundly condemn Farrakhan as a money-grubbing supply-sider. This would represent one of the few palpable successes of our welfare policy.

It was, of course, unreasonable of Jewish leaders to expect every black activist in America to jump up in protest when Farrakhan and his henchmen spewed some bile. Why not every white person—or every gentile? I have yet to apologize for the Rev. Jim Jones, a white brother who killed hundreds of black people. Can you blame the Black Congressional Caucus for being miffed?

WHAT I BLAME THE CAUCUS FOR IS playing this color game with gusto, only to stomp out at half time. The premise of the Congressional Black Caucus is that skin color and politics have a unique intersection and that the interests of African Americans are advanced by the caucus's agenda. (Corollary: Those who oppose the caucus's policy suggestions oppose black Americans.) I believe that the interests of African Americans are in sync only at the most fundamental, constitutional level—the level at which every American has a keen interest in the Bill of Rights and equal protection under law—and from there go in 20 million different directions. But the professionals of the civil rights movement (or its rusty remnant) march to the rhythm of a single drummer, which they claim is the heartbeat of black America.

The wrath of Farrakhan is only the most fiery spark of this volcanic danger to the American way of life. I applaud the minister's openness: He not only believes we should be judged by the color of our skin but is willing to draw the logical illiberal inferences. Sadly, the racialism of Farrakhan's hate rhetoric is not controversial among those who castigate whole classes of Americans. Only its honesty. ®

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis.

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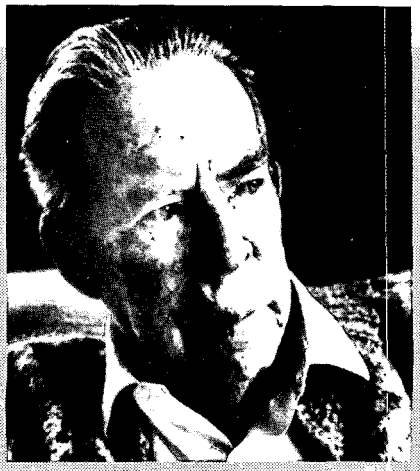

Who was Felix Morley?

And why is the Institute for Humane Studies awarding $7,500 in his honor?

Felix Morley was editor of the *Washington Post* from 1933 to 1940 and a winner of the Pulitzer Prize for distinguished editorial writing. In the *Post* and in subsequent writing, at the height of the New Deal and postwar anti-communism, Morley was deeply committed to a "classical liberal" perspective, emphasizing individual rights, private property, voluntarism, and a noninterventionist foreign policy.